



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



LAW BOOKS

PUBLISHED BY

BELL & BRADFUTE,

12 BANK STREET, EDINBURGH.

M'Laren on Wills and Succession.

The Law of Scotland in relation to Wills and Succession, including the subjects of Intestate Succession, and the Construction of Wills, Entails, and Trust Settlements. By JOHN M'LAREN, Esq., Advocate. In Two large Vols., royal 8vo. Price £3, 3s.

"No book of this rank has been published since the death of Professor George Joseph Bell, except the works of Mr Fraser, Mr Dickson, and Professor Montgomerie Bell. It is high praise to Mr M'Laren that his treatise is not inferior in excellence to any one of them."—*Journal of Jurisprudence*.

"Mr M'Laren must trust to any character that we may have gained for honesty and independence in the expression of our views for the authority of the verdict which we very willingly pronounce in his favour. If we add that these volumes have everywhere the stamp of scholarship, and the sign not only of professional but of general culture, we but make an acknowledgment that has been most justly earned. Mr M'Laren makes no claim to philosophical authorship, in the strict sense of the word, but as a scientific expositor of his subject he takes the very highest rank."—*Scottish Law Reporter*.

"A work remarkable for its perspicuity of language, its comprehensiveness of range, its terseness of narration, its conclusiveness of reasoning, its philosophic generalisations of rule, its exact definitions of principle, its methodic and convenient arrangement."—*Daily Review*.

"He has thrown light into many dark corners of our law, and has furnished a guide in the management of the estates of deceased persons, which no prudent lawyer will want."—*Scotsman*.

Dickson's Law of Evidence. Second Edition.

A Treatise on the Law of Evidence in Scotland, by WILLIAM GILLESPIE DICKSON, Esq., Advocate, Sheriff-Substitute, Glasgow. Second Edition, edited by JOHN SKELTON, Esq., Advocate. Two Vols., royal 8vo. Price £2, 5s.

"We seize the opportunity afforded by the appearance of the second edition of this important work to express our sense of its great value, both as a contribution to the jurisprudence of Scotland and as a guide to the practitioner. The editorial department could not have been placed in better hands."—*Journal of Jurisprudence*.

Marshall's Analysis of Titles to Land Act.

An Analysis of the Titles to Land Consolidation Act 1868, with an Appendix containing the Act, and references to the corresponding portions of the repealed Statutes. By JOHN MARSHALL, Esq., Advocate. One Vol. 8vo. Price 12s.

Wilson's Sheriff-Court Practice.

Handbook of Sheriff-Court Practice and Forms in Civil Cases, with an Appendix of Statutes and Acts of Sederunt. By JOHN DOVE WILSON, Esq., Advocate, Sheriff-Substitute of Kincardineshire. [Nearly ready.]

Hunter on Landlord and Tenant. Third Edition.

Treatise on the Law of Landlord and Tenant, with an Appendix containing Forms of Leases, by ROBERT HUNTER, Esq., Advocate. Third Edition, carefully revised. Two Vols., royal 8vo. Price £2, 2s.

"A treatise of great merit, in which the subject has been discussed with much minuteness of detail, a scrupulous attention to all the precedents and authorities, and a very sound critical examination of their import and effect."—*Prof. Bell's Commentaries*.

Bell's Law Dictionary.

Bell's Dictionary and Digest of the Law of Scotland, with Explanations of the most ordinary English Law Terms. New Edition, with numerous additions, by the late GEORGE ROSS, Esq., Advocate, Professor of Scots Law in the University of Edinburgh. Royal 8vo. Price £1, 14s.

"Mr Ross has supplied the void in our current legal libraries by producing a new edition of the Law Dictionary, very much enlarged, and bringing down the state of the law to the present time.—As a book of reference we know none calculated to be more useful."—*Courant*.

Juridical Styles. Vols. I., II. Fourth Edition.

The Juridical Society's Styles, comprehending the Constitution, Transmission, and Extinction of Heritable and Moveable Rights. Vol. I., HERITABLE RIGHTS. Vol. II., MOVEABLE RIGHTS. Each, Price £1, 14s.

Bell's Lectures on Conveyancing.

Lectures on Conveyancing, by the late ALEXANDER MONTGOMERIE BELL, Esq., W.S., Professor of Conveyancing in the University of Edinburgh. Two vols. royal 8vo. Price £2, 2s.

"In these volumes the student will find Scottish Conveyancing treated with singular clearness and fulness, or rather exhaustiveness, and those in practice will find information sufficient to guide them, and to guide them in safety, along the thorniest and most perplexing paths of every department of the art."—*Glasgow Herald*.

"These Lectures will form a lasting monument of the great maturity of their author's mind on all the subjects of which they treat. The editorial department deserves to be noticed with much commendation."—*Aberdeen Free Press*.

"Every division of the extensive field is fully and ably treated. . . . One of the best features of the whole work is its great facility of reference."—*Dumfriesshire Herald*.

Hendry's Manual of Conveyancing. Second Edition.

A Manual of Conveyancing, in the form of Examinations, embracing both Personal and Heritable Rights, by the late JOHN HENDRY, Esq., Writer to the Signet. Second Edition, carefully revised, by J. T. MOWBRAY, W.S. One Vol. 8vo. Price 15s.

"The work, as corrected and enlarged by the learning and the labours of Mr Mowbray, is an excellent practical treatise on Scottish Conveyancing; and while we advise every student to procure a copy, and to study it earnestly, we think that the volume ought to be found in the library of every practitioner, however limited or however extensive his conveyancing practice may be."—*Glasgow Herald*.

"Mr Mowbray's labours have greatly increased the value of the Manual. It was at first the work of a diligent student; it is now enriched by the commentaries of a shrewd and experienced man of business."—*Journal of Jurisprudence*.

Ross' Leading Cases.

Leading Cases in the Law of Scotland;—Land Rights. Prepared from the original pleadings, arranged in systematic order, and elucidated by opinions of the Court never before published, by the late GEORGE ROSS, Esq., Advocate, Professor of Scots Law in the University of Edinburgh. Three Vols., royal 8vo. Price £3, 3s.

"We have risen from their study with the conviction, that by their publication the learned gentleman has most materially contributed to the jurisprudential literature of his country."—*Law Magazine*.

"Of the diligence and accuracy with which Mr Ross has executed the heavy task that he assigned to himself, we venture to speak with unqualified approbation."—*Scotsman*.

Nicolson on Elections.

A practical Treatise on the Law of Parliamentary Elections in Scotland, including the Election of Representative Peers, and the Registration of Voters in Counties and Burghs, with a copious Appendix of Statutes and Forms. By JAMES BADENACH NICOLSON, Esq., Advocate. One vol., 8vo. Price 12s.

"From its embracing the whole legislation on the subject, it possesses advantages which no other possesses."—*Journal of Jurisprudence*.

"Conveys its information in language which is admirably clear and terse, and with an exhaustive completeness. Must be regarded as the prime text-book on the subject."—*Daily Review*.

"Could not have been made a better book."—*Courant*.

Nicolson on Scotch Reform Act 1868.

An Analysis of the Scotch Reform Act 1868, in the form of Practical Notes on the Statute; to which are appended the Universities Election Act, and the Burgh and County Voters' Acts, and a full index. By JAMES BADENACH NICOLSON, Esq., Advocate. 8vo., Price 4s.

"Mr Nicolson has already established his claim to be regarded as an authority on the subject by his larger treatise upon the Law of Election and Registration. We can commend his Analysis to the attention not only of the members of the legal profession, but to the general public."—*Courant*.

L. Sect. B. 58 d. Land 2

L, L

OW. Scotl.

510

M 368

AN ANALYSIS
OF THE
TITLES TO LAND CONSOLIDATION
(SCOTLAND) ACT 1868,
31 AND 32 VICTORIÆ, CAP. CI.

WITH
AN APPENDIX,
CONTAINING
A CLASSIFIED TABLE OF THE CLAUSES OF THE ACT;
THE ACT AND SCHEDULES THEREOF,
WITH MARGINAL REFERENCES TO THE CORRESPONDING SECTIONS OF THE
REPEALED STATUTES;
THE LAND REGISTERS (SCOTLAND) ACT 1868;
AND ADDITIONAL FORMS CONNECTED WITH HERITABLE SECURITIES.

BY
JOHN MARSHALL, ADVOCATE.



EDINBURGH :
BELL & BRADFUTE, 12 BANK STREET.

MDCCCLXIX.

JOHN BAXTER, PRINTER, EDINBURGH.

TO
EDWARD STRATHEARN GORDON, Esq., Q.C.

EDINBURGH, *15th Jan.* 1869.

MY DEAR GORDON,

I had intended to inscribe these pages to my Father, who took much interest in the progress of the Titles Consolidation Bill through Parliament, and cordially approved of the Amendments on the Law which the Act has introduced.

His death has frustrated my intention.

I trust that you will allow me now to dedicate to you, as the Author of the Measure, this humble attempt to facilitate the Study of the Act, which is not the least important of your many valuable contributions as a Legislator to the cause of Law Reform.

Believe me Ever,

Yours very Sincerely,

JOHN MARSHALL.

P R E F A C E.

THE following pages have been written—not as a Treatise on Conveyancing,—but simply as an attempt to analyse the “Titles to Land Consolidation (*Scotland*) Act 1868, and so to render accessible to the Profession the vast amount of important Legislation which is embodied in that Statute. It was not an easy task to amalgamate into one homogeneous mass the contents of the many Acts relating to Conveyancing which, beginning with the Heritable Securities Act of 1845, and ending with the Titles to Land Act of 1860, lay scattered at intervals over the Statute Book. The work of Consolidation, however, has been accomplished by the late Lord Advocate with care and success; and advantage has been taken of the opportunity to introduce several much-needed alterations and improvements of the Law. One of the most important of these—viz., the Assimilation of the Law of *Mortis Causa* Settlements of Land to that of Settlements of Moveables, whereby the succession to both classes of property may

now be regulated by a simple Will or Testament,—has silently effected a revolution in our system of Feudal Conveyancing,—so silently that it is to be feared that this and the other amendments of the Law introduced by the Act are even yet not generally known. The Statute, however, is so long and comprehensive that, in order to become familiar with all its enactments, much and laborious study is requisite, and it is with the view of facilitating that study that I venture to submit this little work to the Profession. It is framed upon the Plan of Dividing the Act into three great Branches—viz., “*Irredeemable Rights*,” “*Redeemable Rights*,” and “*General Enactments*,” and then subdividing each Branch, and reducing each subdivision to its elements. By means of numerous foot-notes, referring to the Act as printed in the *Appendix*,—by marginal references opposite each section of the Act as so printed, showing the corresponding sections of the Repealed Statutes, and distinguishing what is new,—by a copious Index,—and by the Classified Table of Contents prefixed to the *Appendix* (pp. i–viii),—I trust that I may to some extent have succeeded in indicating the nature and the value of the stores which the Act contains.

The “Land Registers (*Scotland*) Act 1868”—as bearing closely on the subject matter of the present Act—has also been printed at full length in the *Appendix*, and I have ventured to add one or two Forms of Writs connected with Heritable Securities. (See *Appendix*, p. 145 to 147.)

I have to thank Professor Tytler and Mr James Auldjo Jameson, W.S., for having kindly taken the trouble to read over the proof sheets, and for many useful

hints; and I have to express the great obligation under which Mr C. B. Logan, W.S., has laid me by his careful and critical revision of the whole work, by the correction of many errors which it originally contained, and by his having kindly performed the irksome task of checking references and comparing recitals.

EDINBURGH, *January* 1869.

CONTENTS.

	Page
INTRODUCTORY REMARKS,	1-16
ARRANGEMENT OF THE CLAUSES OF THE ACT,	17-19
I. IRREDEEMABLE RIGHTS,	20-149
(1) FORM OF TITLES EMPLOYED IN CONSTITUTING AND TRANSMITTING IRREDEEMABLE RIGHTS, AND IN COMPLETING DISPONEE'S TITLE BY INFESTMENT OR ITS EQUIVALENT,	20-70
1. <i>Constitution and Transmission of Irredeem- able Rights—Form of Disposition— Short Clauses,</i>	20-38
(1) Disposition of Lands not held by Bur- gage Tenure,	21
(2) Disposition of Lands held by Burgage Tenure,	28
(3) Clauses which may be competently in- serted in all Conveyances of Lands by whatever Tenure held,	30
2. <i>Completion of Title of Disponee by Infest- ment or its equivalent,</i>	38-70
(1) Infestment by Instrument of Sasine,	38
(2) by Recording Conveyance,	39
(3) by Notarial Instrument,	49
(4) by Resignation <i>ad reman- entiam,</i>	53
3. <i>Completion of Title of Assignee of Unre- corded Conveyance,</i>	53-58
(1) By Recording Assignment,	
(2) By Notarial Instrument,	57

AN ANALYSIS

OF THE

ERRATA.

Page 98, line 23, after 1661 *insert* c. 24.

127, " 9, *for* c. 20 *read* c. 50.

154, line 2 from foot, *for* p. 145 *read* p. 146.

155, " 25, *for* p. 145 *read* p. 147.

APPENDIX.

Page iii, *transpose* " Schedules (O) and (LL) " from section 26 to section 25.
v, line 19, *for* " Schedule (V) " *read* Schedule (U).

35, section 59, in marginal reference, *for* c. 41 *read* c. 49.

47, section 87, in marginal reference, after " 10 and 11 Vict. c. " *insert*
51, §.

86, line 2, before Cap. XXXV, *insert* 8 and 9 Vict.

which contained many valuable suggestions for the improvement of Scottish Conveyancing by the abolition of unnecessary Forms and Ceremonies, and by the substitution of Short Writs for the cumbrous and prolix Deeds which had previously been considered essential to the Conveyance of Land.

Report of Law Commission in 1838.

(1) *Sasine.*

The Commissioners *inter alia* recommended, in regard to all Land-Rights, the abolition, or at all events the disuse, of the *Ceremony* of delivering *Sasine* on the Lands. In the case of Irredeemable Rights, while they recommended the retention of the *Instrument* of *Sasine*, they



AN ANALYSIS
OF THE
TITLES TO LAND CONSOLIDATION
(SCOTLAND) ACT 1868.

INTRODUCTORY REMARKS.

Object of the Act.

The main object of the *Titles to Land Consolidation (Scotland) Act* 1868 is, as the Preamble states,

“to Consolidate the Statutes which have been passed during recent Years relating to the Forms of Constituting and Completing Titles to Land and to Heritable Securities in *Scotland*.”

The Statutes referred to were more or less based on the Third Report of the Law Commission—issued in 1838—which contained many valuable suggestions for the improvement of Scottish Conveyancing by the abolition of unnecessary Forms and Ceremonies, and by the substitution of Short Writs for the cumbrous and prolix Deeds which had previously been considered essential to the Conveyance of Land.

Report of Law Commission in 1838.

(1) *Sasine*.

The Commissioners *inter alia* recommended, in regard to all Land-Rights, the abolition, or at all events the disuse, of the *Ceremony* of delivering Sasine on the Lands. In the case of Irredeemable Rights, while they recommended the retention of the *Instrument* of Sasine, they

suggested that it should be greatly abbreviated, and should be reduced to a simple statement attested by a Notary and recorded in the Register of Sasines, setting forth the terms of the Grant,—in so far as the interest of the Party or of the Public required these to be entered upon the Record in order to Publication; the Description of the Lands; the Destination, and the Burdens, Conditions and Limitations which were to affect the Grant as Real Burdens.(a)

(2) *Heritable Securities.*

In the case, however, of Heritable Securities the Commissioners suggested a still greater change—viz., that not only the *Ceremony*, but also the *Instrument* of Sasine should be dispensed with, and that the Bond or other Warrant should itself be recorded in the Register of Sasines; such Registration being considered as the Act of Sasine, and all questions as to the Completion of the Right being determinable by the Date of Registration.

It will afterwards be seen that this suggestion, which the Commissioners did not propose to extend to Irredeemable Rights, has now for some years been adopted with great advantage in all classes of Land-Rights, Irredeemable as well as Redeemable.

Infestment Act, and Heritable Securities Act of 1845.

No legislation followed upon the Report of the Commission until the year 1845, when two most important measures were passed, the one being an

“*Act to simplify the Form and diminish the Expense of obtaining Infestment in Heritable Property in Scotland;*”(b)

(a) It is worthy of remark that Lord Kames, in his *Historic Law Tracts* (iii, “*On Property*”), originally published in 1758, thus foretold this improvement:—“Writ hitherto with regard to Land-rights has not in Scotland superseded the use of symbolical delivery: But when our notions shall be more refined, and substance regarded more than form, it is probable that external symbols, which have long been laid aside in personal rights, will also be laid aside in rights affecting land.”

(b) 8 and 9 Vict. c. 35.

the other, being an

“ Act to facilitate the Transmission and Extinction of Heritable Securities for Debt in Scotland.”(c)

In the “ Infertment Act,”—full effect was given to the suggestion of the Commissioners, that the Ceremony of giving Sasine on the Lands should be dispensed with in regard to all Rights to Land not held by burgage tenure, and that the Instrument of Sasine should be abbreviated. In the “ Securities Transmission Act,” partial effect was given to the suggestion of the Commissioners, that Registration of the Warrant might be substituted for the Instrument in case of Securities ; for it was enacted that where a Security had been constituted by Infertment subsequent Transmissions of it might, without being followed by an Instrument of Sasine, be recorded in the Register of Sasines. Two new Writs, viz., “ *The Writ of Acknowledgment*,” in favour of the Heir of a Creditor in right of a Security constituted by Infertment ; and “ *The Notarial Instrument*” in favour of his Heir or General Disponee, were introduced by the latter Statute. The “ Writ” and “ Instrument” will be hereafter fully explained. It is enough here to say that the latter consisted of a short Statement by a Notary Public setting forth the Bond and Sasine thereon, and the date of Registration of the latter, and adding that “ E. F.” (*the party in right of the Bond*) had acquired right to the Bond by Service, or by General Disposition, the Title being specified in the Instrument. Registration of the Writ or Instrument in the Register of Sasines completed the Title of the Heir or Disponee.

These measures, which were introduced into Parliament by *Lord Colonsay* (then *Lord Advocate M’Neill*), initiated the Series of Statutes which were passed at intervals up to the year 1860, and which have been consolidated by the present Act of 1868.

Conveyancing Statutes of 1847.

In 1846 the same learned Lord introduced other two measures which had been recommended by the Law Commissioners ; one to amend the Law and Practice as to the Service of Heirs ; the other to amend and simplify the Law and Practice as to Crown Charters. A change of Government prevented these Bills from being passed into Law.

In the following year, however, the late *Lord Rutherford* (who was then *Lord Advocate*) introduced into Parliament five Bills relating to Scottish Conveyancing, all of which were passed in that Session, and regarding which it is not too much to say that five more carefully prepared and useful Statutes have seldom if ever been enacted in any one Session of Parliament. By these Statutes(*d*) many old and prolix Forms were abolished, and others, although not abolished, were declared to be unnecessary, new and shorter Forms being at the same time substituted, which, if adopted by parties interested, were by the Statutes declared to have the Import, Meaning and Effect of the old well-known Forms. These new Forms thus became, as it were, Algebraical Symbols, the full Import and Meaning of which were to be found in the several Statutes by which they were introduced.

Service of Heirs Act 1847.

The *first* of these five Statutes—viz., the Service of Heirs Act(*e*)—abolished the antiquated and unsatisfactory Procedure under the Brieve of Inquest, and substituted a simple Form of Process before Sheriffs ; a new Official, termed the “ Sheriff of Chancery,” being specially appointed with exclusive jurisdiction in certain classes of Services, and with power to deal with all Services in which the parties might prefer to resort to his Court instead of to that of the Sheriff of a County.

(*d*) 10 and 11 Vict. c. 47 ; 10 and 11 Vict. c. 48 ; 10 and 11 Vict. c. 49 ; 10 and 11 Vict. c. 50 ; 10 and 11 Vict. c. 51.

(*e*) 10 and 11 Vict. c. 47.

Transference of Lands Acts of 1847.

The *second* and *third* of these Statutes, viz.,—the Act regulating the Transference of Lands not held by Burgage Tenure,^(f) and the corresponding Act regarding Lands held by Burgage Tenure,^(g)—greatly simplified and shortened the Forms of Dispositions, the Mode of Entry with Superiors, and the procedure in the Constitution of an Ancestor's Debts or Obligations against his Apparent Heir, and in Adjudications of the Ancestor's Estate in Implement or Satisfaction of his own Debts or Obligations, or of the Debts and Obligations of the Apparent Heir himself.

Heritable Securities Act of 1847.

The *fourth* of these Statutes^(h) greatly shortened the form of Bonds and Dispositions in Security and of Discharges of Securities, and gave full effect to the suggestion of the Law Commissioners as to Heritable Securities, by enacting that the Registration of the Security itself in the Register of Sasines should have the full Operation and Effect of an Instrument of Sasine following on the Bond, expedite and recorded according to the prior practice. The Statute also extended the use of the Notarial Instrument to many cases other than those to which, as has been mentioned,⁽ⁱ⁾ it had been limited by the Securities Act of 1845.

Crown Charters Act of 1847.

The *fifth* and last of these Statutes^(k) dealt exclusively with Crown Charters, abolishing much useless procedure, and substituting the English language for the Latin, and short forms for the unnecessarily long forms previously in use.

Reference to Conditions of Entail and Real Burdens.

Two very important provisions contained in these Statutes were to the effect that in Deeds in which it was usual

(f) 10 and 11 Vict. c. 48.

(i) *Vide supra*, p. 3.

(g) 10 and 11 Vict. c. 49.

(k) 10 and 11 Vict. c. 51.

(h) 10 and 11 Vict. c. 50.

or necessary to insert the Conditions of an Entail, or Real Burdens, under which the Lands were held, it should be sufficient to refer to such Conditions or Real Burdens, as set forth at full length in some prior Deed or Instrument recorded in the Register of Tailzies or Register of Sasines, provided such Deed or Instrument, and the Register in which, and the Date on which it was recorded, were all distinctly specified in the Deed containing the Reference.

Entail Amendment Act of 1848.

In the following year (1848), *Lord Rutherford*, still further carrying out the suggestions of the Law Commission, introduced into Parliament and carried a most useful measure for the Amendment of the Law of Entail, which is generally known as the "*Rutherford Act*."(*l*) With that Statute, however, the present Consolidation Act does not in any way deal, although it repeats, in § 14, (*m*) the valuable provision (contained in § 39 of the *Rutherford Act*), that where a Deed of Entail contains a Clause authorising Registration thereof in the Register of Entails, it shall not be necessary to insert in the Deed Irritant or Resolutive Clauses, the construction of which, in older Entails, had given rise to much tedious and expensive litigation.

Titles to Land Act of 1858.

From the year 1848 to 1858, with the exception of the passing of one or two short remedial or explanatory Acts, there was no legislation regarding the Land-Rights of Scotland. In 1858, however, the present *Lord President* of the Court of Session (then *Lord Advocate Inglis*) introduced into Parliament and carried the important Statute known as the "*Titles to Land Scotland Act 1858*,"(*n*) which, besides still further shortening many of the Forms used in Conveyancing, dispensed with the Instrument of Sasine, and extended to all Conveyances the privilege, previously confined to Heritable Securities, of being re-

(*l*) 11 and 12 Vict. c. 36.

(*n*) 21 and 22 Vict. c. 76.

(*m*) The Act, § 14.

corded in the Register of Sasines, such Registration being declared to be equivalent to Infeftment by recorded Instrument of Sasine. The Forms of Entry of Heirs and Singular Successors, both with the Crown and with Subjects-Superior, were greatly abbreviated,—Short Writs to be indorsed upon Conveyances being substituted for the old Charters of Resignation and of Confirmation, and a Short Writ of *Clare Constat* for the former Precept from Chancery or Precept of *Clare Constat*.

The insertion in a Deed of Entail of a Clause consenting to Registration in the Register of Tailzies was declared to have the additional effect of rendering it unnecessary to insert in the Deed the three Cardinal Prohibitions of the Statute 1685, c. 22, against Alienation, Contraction of Debt, and Alteration of the Order of Succession; and a Reference in a subsequent Conveyance to the Description of Lands, as contained in some prior Deed or Instrument recorded in the Register of Sasines, was declared to be equivalent to the full Insertion of the Description in such subsequent Conveyance.

The Notarial Instrument was also made available in a numerous class of cases to Heirs, and to Disponees and Assignees of Heritable Rights of all kinds, Irredeemable as well as Redeemable, and particularly to General Disponees,—thus enabling a person holding a General Disposition to Complete his Title to the Property carried by the Disposition, without the necessity, which had previously existed, of adopting the cumbrous machinery of Constitution and Adjudication in Implement against the Heir of the Disponer.

Titles to Land Act of 1860.

The Act of 1858 being confined exclusively to Lands not held by Burgage Tenure, it became necessary to make similar provisions regarding Burgage Subjects. This was effected by the last Statute in the series now consolidated, viz., the "*Titles to Land Scotland Act 1860*,"(o) which was introduced and carried by the present *Lord Advo-*

(o) 23 and 24 Vict. c. 143.

cate (*Moncreiff*). That Statute at the same time repealed and amended certain of the Clauses of the Act of 1858, and introduced several new and useful enactments relating to Conveyancing generally.

Consolidation Necessary.

To all of the Statutes of which we have now given a rapid outline, Schedules were appended—containing numerous Forms of Deeds, Writs, and Instruments,—and as these Styles, and the enactments regarding them, were thus scattered throughout the Statute Book, and were, moreover, not altogether uniform, it became desirable to have the various Statutes consolidated, so that the Conveyancer might find within the compass of one Act of Parliament all the Statutory provisions of recent years relating to Conveyancing, and might have before him, in a connected series, a complete and uniform collection of the Styles of the various Writs which he might be called upon to prepare. The task of consolidation was undertaken by the late *Lord Advocate (Gordon)*, and a measure giving it effect has now been passed into law as the “*Titles to Land Consolidation (Scotland) Act 1868*,”(*p*) which forms the subject of the present Treatise.

Titles to Land Consolidation (Scotland) Act 1868.

The Act has been framed on the plan of repealing the whole of the Statutes above enumerated, with one exception, and re-enacting all their important provisions, retaining as far as practicable their phraseology, which had come to be well understood by Conveyancers. The exception referred to is the Infeftment Act of 1845, only one section of which (§ 6) is repealed. The reason for retaining this Act on the Statute Book in its original form was, that although the more recent Acts, including the Consolidation Act, have rendered the Instrument of Sasine unnecessary, they have not abolished it; and as the Act of 1845 had

(*p*) The Act 31 and 32 Vict., c. 101. See *Appendix*, in which it is printed at length.

introduced a short and improved Form of that Instrument it was desirable to retain that Form. But it would obviously have been absurd to have included in a statute which was intended to render Sasine unnecessary, a series of Provisions and Schedules regulating the Forms and Mode of giving Sasine. In order, however, that any Conveyancer desiring to have recourse to the forms enacted by the Act of 1845 may have its provisions before him along with those which are henceforth to be generally used, the whole of that Act has been included in Schedule (A), No. 2, of the present Act, with a marginal marking at § 6 thereof, to show that the repeal (*q*) is limited to that Section.

In consolidating the various Statutes condensation was found to be, to a considerable extent, not only practicable but desirable, and this has been facilitated by prefixing to the Act a very full and comprehensive Interpretation Clause.

One instance may suffice to illustrate this.

It has already been mentioned, that at least four of the repealed Statutes contained each a clause providing that where lands are held under a Deed of Entail, the Conditions of the Entail, if these had ever entered the Public Records, might in subsequent Conveyances of the Lands be referred to as so recorded, instead of being inserted at length; and another clause, providing for a similar reference to Real Burdens. The various Writings to which the provisions of these eight clauses were applicable, were also all enumerated at length in each clause. In the present Act, however, two clauses are sufficient for all the Deeds in which such a reference is necessary or competent. This condensation is effected by declaring, in the Interpretation Clause, (*r*) that the word "Deed" and the word "Conveyance" shall each extend to and include every conceivable Writing in which it is usual or necessary to insert or refer to Conditions of Entail or Real Burdens, and by enacting (*s*) that in every Conveyance or Deed of or relating to Lands held under a Deed of Entail,

(*q*) See *Appendix*, p. 87.

(*r*) See *Appendix*, p. 2.

(*s*) The Act, §§ 9, 10.

&c., or under Real Burdens, &c., it shall be competent to refer to these instead of inserting them at length.

Alterations of the Law Introduced by the Act.

The Act, moreover, not only consolidates the prior Statutes, but introduces certain **Alterations** and **Amendments** of the Law, which it is believed will be generally regarded as advantageous to the Public. These are spoken of in the Preamble to the Act as

“certain Changes upon the Law of *Scotland* in regard to Heritable Rights, and to the Succession to Heritable Securities in *Scotland*.”

They will be afterwards explained more in detail. In the meantime, it is enough to point out very shortly the nature and scope of these alterations.

(1) *Females may be Instrumentary Witnesses.*

In the first place, it is provided (*t*) that Female Persons of the age of fourteen and upwards, and subject to no legal incapacity, may act as Instrumentary Witnesses in the same way as Male Persons of that age, and subject to no legal Incapacity. The provision is retrospective in its operation, and removes all doubt as to the competency of Women to act as Instrumentary Witnesses. (*See farther as to this matter, p. 27.*)

(2) *Heritage may be settled by Testament.*

The Second alteration of the Law effected by the present Act relates to Settlements of Heritage. The Rules of the Feudal Law which regulate our System of Land-Rights have hitherto prevented an owner of Land from Testing upon his Heritage; and it has often happened that while a Person, whose fortune consisted chiefly of Moveable Property, could settle such Property, however large and valuable, by a simple Testament, the same Person, if he also owned a paltry garret, could not settle the succession thereto in any other way than by a Deed

(*t*) The Act, § 139.

containing words of *de præsenti* Conveyance—(the use of the word “*dispone*” being generally deemed essential)—and tested and authenticated with all the solemnities required by the law of Scotland in reference to such Conveyances. No amount of Intention, however clearly expressed, and no words of Alienation or Bequest, would, without the use of words of actual *de præsenti* conveyance, have been of any avail to transmit the property to the party whom the owner desired to favour. This anomaly is removed by the present Act,^(u) which fairly grapples with the difficulty, by distinctly providing at the outset, that from and after the Commencement of the Act, it shall be competent to the Owner of Lands to settle the Succession to the same, in the event of his death, not only by Conveyances *de præsenti* according to the existing Law and Practice, but likewise by Testamentary or *Mortis Causa* Deeds or Writings; and after providing that the absence of the word “*Dispone*” shall not be held to affect the validity of any Testamentary or *Mortis Causa* Deed or Writing purporting to convey or bequeath land—the Act goes on to provide that where such Deed or Writing—if executed in the form required or permitted by the Law of Scotland in regard to Testaments—shall contain, with reference to Lands, Words which, if used with reference to Moveables, would have been a valid bequest of such moveables, the Deed or Writing shall be equivalent to a General Disposition of such Lands in favour of the Grantee or Legatee under the Testamentary or *Mortis Causa* Deed or Writing, and shall entitle such Grantee or Legatee to make up his Title thereto, as if the Deed or Writing had been a General Disposition.

- (3) *Decree of Special Service to vest a Transmissible Personal Right in the Heir served, although dying before Infestment.*

The third Alteration which we have to notice will

(u) The Act, § 20.

be found in § 46.(v) Under the Service of Heirs Act 1847 (§ 21), it was enacted that

“ for the purpose of completing the Feudal Title ”
of the Heir served,

“ but of such Heir only,”

every decree of Special Service, when recorded in Chancery and extracted, should be equivalent to a Disposition of the Lands mentioned in the Decree from the Ancestor to the Heir served, and in particular that it might be used by the Heir as a Warrant for Infefment.

In the case of *Moreton's Trustees v. Lockhart*, 19 July 1854, 16 D., p. 1109, it was decided that the preliminary words of the Section controlled the whole of the Enactment, and that the Decree of Special Service vested no Right in the Heir served, which he could transmit to a Donee or Heir unless and until he were himself infeft upon his Service. Had the Ancestor, instead of being infeft in the Lands, possessed them merely on a Personal Title, a General Service by his Heir would have taken the subjects out of the *hæreditas jacens* of the Ancestor, and vested them in the Heir so as to be transmissible to his own Heirs and Assignees without the necessity of his expeding Infefment. It seemed, therefore, to be very anomalous that the accident of the Ancestor having died Infest in the Lands should impose upon his Heir the necessity of himself being infest, and should expose him to the risk of having his own settlements (it might be his own Marriage-Contract) frustrated by his dying after being served Heir in Special, but without being Infest, which was the state of matters that occurred in the case of *Moreton's Trustees*. The present Statute removes that anomaly. It omits the qualifying words which restricted the operation of the former Statute, viz.,

“ for the purpose of completing the Feudal Title of the Heir so served, but of such Heir only,”

and it expressly enacts that every Decree of Special

(v) The Act, § 46.

Service under the Old Act, on being recorded in Chancery and extracted, if pronounced in favour of any Person in Life at the Passing of the Act, and Every Decree of Special Service to be pronounced in virtue of the Consolidation Act, on being so recorded and extracted, shall to all intents and purposes, unless and until Reduced, not only have the full legal operation and effect of a Disposition from the Ancestor to the Heir served, but shall be held from the Date of such Recording to vest in the Heir so served a Personal Right to the Lands therein contained, and to render said Lands liable to all his Debts and Deeds, and to the Diligence of his Creditors, as well after his Death as during his Life, which right shall be transmissible to his Heirs and Successors entitled to succeed to the said Lands under the Destination thereof, and also to his Assignees, Legal as well as Voluntary, except in so far as such Transmission should be effectually prohibited by the Deeds under which the lands were held.

(4) *Heritable Securities to be Moveable as to Succession.*

The *fourth* Alteration to be noticed relates to Heritable Securities—that is, Money lent upon the Security of Land. From the earliest times a Bond for money, containing a Clause of Infeftment, had been regarded as being Heritable *suâ naturâ*; and the idea was of course strengthened after the practice became general of the Borrower granting to the Lender an actual Conveyance of the Lands in security of the Loan. Great inconvenience has often arisen, and much injustice has been done, from the inflexibility of this Rule, particularly in the case of the younger children of persons who had invested their means on Heritable Security, ignorant of the Law which in the case of intestacy gave the whole of the Money so invested to the eldest son or heir-at-law. The present Act obviates that inconvenience and injustice by providing, (x) as had been done two centuries previously in the case of ordinary

(x) The Act, § 117.

Personal Bonds(y) (which, if bearing a clause of interest, had before that time been regarded as heritable *quoad Succession*), that all Heritable Securities shall be Moveable as regards the Succession of the party in Right of the Security, unless where Executors shall be excluded. The alteration has, however, been qualified by a declaration similar to that which was contained in the Act of 1661, viz., that these Securities should remain Heritable as regards the rights of Spouses and the Fisc; and by the further declaration, that although in case of Intestacy they shall belong to the executors of the creditor, as his Heirs *in mobilibus*, his younger children are not, by claiming a share of the Securities as *Legitim*, to have the power of defeating any Settlement of the Securities which their father may make by Testament.

- (5) *Inhibition to be Effectual only from date of Recording Notice thereof, and in certain cases only from date of Recording the Inhibition itself.*

In the fifth place, improvements have by the Act been introduced regarding the law of Inhibition. As the law formerly stood, the Inhibition, after being Published at the Market-Cross of the head Burgh of the County in which the lands are situated, and of the Domicile of the Inhibited party, and also at the Pier and Shore of Leith, might be recorded in the Register of Inhibitions at any time within forty days after such Publication; and if so registered, it had the effect of annulling all Alienations of his Land made by the party inhibited, between the date of such Publication at the Market-Cross and the date of Registration in the Register of Inhibitions, although such Registration was, in point of fact, the only real and effectual Publication of the Diligence. This—one of the very few defects in our admirable system of Registration of Land-Rights—has been removed by the present Statute.

The old and useless form of Publication at the Market-

(y) 1661, c. 32.

Cross, &c., &c., is dispensed with by two Acts of the last session of Parliament, viz., the *Land Registers* (Scotland) *Act* 1868,"(z) and the "*Court of Session* (Scotland) *Act* 1868,"(a) and the only Publication of an *Inhibition* henceforth necessary is Registration in the Register of Inhibitions, whether the Diligence be in the form of "*Letters of Inhibition*," or of a "*Warrant of Inhibition*," in the Will of a Summons, as provided by the "*Court of Session Act*."

But as the Inhibition cannot be registered until it has been executed against the party inhibited, and as valuable time might thus be lost, it is provided by the present Act,(b) that a Short Notice of an Inhibition may be registered in the Register of Inhibitions, and if the Inhibition and Execution thereof shall be recorded in the said Register within twenty-one days from the date of such Registration of the Notice, the Inhibition is to draw back to the date of the Registration of the Notice; otherwise it is to take effect only from the date of the Registration of the Inhibition itself, and of the Execution thereof. It will thus be impossible, after 31st December 1868, for the Public, if they choose to search the Record of Inhibitions, to incur the risk of having their onerous transactions set aside on the ground of latent Inhibitions against the party with whom they are transacting.

Letters of Inhibition may be now in a short form, provided by the Statute,(c) and no Inhibition, in whatever form, is in future to have any effect against *acquirenda*,(d) unless the *acquirenda* consist of Lands which, at the date of recording the Inhibition or Notice thereof, were destined to the person inhibited, by a Deed of Entail, or by a similar Indefeasible Title.

Further provision (e) is made for Inhibitions on a depending Summons being recalled on petition to the Lord Ordinary in the same way as Arrestments may be recalled

(z) 31 and 32 Vict. c. 64, § 16. See *Appendix*, p. 133.

(a) 31 and 32 Vict. c. 100, § 18.

(b) The Act, § 155.

(d) The Act, § 157.

(c) The Act, § 156.

(e) The Act, § 158.

under the personal Diligence Act, 1st and 2d Victoria, chapter 114.

(6) *Litigiousity to date from recording Notice of Action.*

In the sixth place, another Improvement, tending to increase the value of our system of Registration of Land-Rights, is to be found in the provision made by the Act(e) for Notice of Actions of Reduction of Deeds relating to lands being recorded in the Register of Inhibitions, and for Notice of Summonses of Adjudication being recorded in the Register of Adjudications; it being enacted that no such Summons shall have any effect in rendering litigious the lands to which it relates, except from and after the date of the Registration of such Notice.

(7) *Right to Heirship Moveables abolished.*

The only other new enactment which it is necessary here to notice is the provision (g) by which the Right of an Heir of Line to claim Heirship Moveables is abolished from and after the passing of the Act.

Land Registers (Scotland) Act 1868.

During last session of Parliament another Statute was passed regulating matters closely connected with those which are dealt with in the present Act. We refer to the Land Registers (Scotland) Act 1868, 31 and 32 Vict., c. 64, which we have printed at full length in the *Appendix*, p. 133, and the chief object of which is to abolish the Particular Registers of Sasines and of Inhibitions throughout Scotland, and to substitute for Registration in these Registers, Registration in the General Registers at Edinburgh.

(e) The Act, § 159.

(g) The Act, § 160.

ARRANGEMENT OF THE CLAUSES OF THE ACT.

Having now explained generally the Nature and Scope of the Statute, we shall proceed with our proposed Analysis of its provisions; for the more easy comprehension of which we have printed the Act at full length in the Appendix to this Volume, with references on the margin of each Section to the corresponding Sections of the repealed Acts;—and we have prefixed to the Appendix a Table of the Clauses of the Act, arranged under Different Heads, shewing generally the various Subjects with which the Act deals.

The Bill, as originally introduced, was divided into several Branches—viz., Irredeemable Rights, Redeemable Rights, and General Enactments, each of these being again subdivided into parts. This mode of division, although useful to persons considering the Bill during its passage through Parliament, and facilitating its examination, might have led to inconvenient results if retained in the completed Statute, which has accordingly been printed as one continuous Act. But it will be seen on perusing it that in point of fact the Clauses have been arranged with the view of placing as far as possible in juxtaposition all the enactments relating to each of the above mentioned Departments of Conveyancing with which the Act deals: and in the Table of Contents prefixed to the Act as printed in the Appendix hereto, as well as in the following Analysis, the Divisions and Subdivisions of the original Bill have been to a considerable extent reverted to.

The first Four Sections are preliminary, and relate to the Title and Commencement of the Act,—the Interpretation of the Terms used in it,—and the Statutes which are repealed. The remaining Sections re-enact and consolidate the repealed Enactments, and enact various new Provisions relating to Conveyancing.

Title of the Act. § 1.

The full Title of the Act is

“An Act to Consolidate the Statutes relating to the Constitution and Completion of Titles to Heritable Property in Scotland, and to make certain Changes in the Law of Scotland relating to Heritable Rights.”

and the Short Title is, by § 1, declared to be

“The Titles to Land Consolidation (Scotland) Act 1868.”

Commencement of Act. § 2.

The Act is to take effect from and after 31st December 1868, unless in so far as it is therein appointed to take effect at an earlier date.

The only enactment which is to take effect before that date is § 160, by which the claim of an Heir to Heirship Moveables is abolished as from the passing of the Act on 31st July 1868.

Interpretation Clause. § 3.

We do not propose here to make any Observations on this Section, but we shall, in our remarks upon the subsequent Sections of the Act, point out the operation and scope of this clause wherever such explanation may seem necessary. The clause is printed at length in the Appendix, p. 1.

Acts Repealed. § 4.

For the complete list of Acts repealed by the present Act, reference is made to Schedule (A).(a) The most important of these Acts have already been pointed out.(b) It is enough here to say that the Repeal embraces *inter alia* the 6th Section of the Infestment Act of 1845 (which regulated the now obsolete Precept from Chancery), the remainder of that Act being allowed to remain operative for the reason already explained ;(c) the Heritable Securities Act of 1845 ; all the Statutes passed from 1847 to 1860

(a) See *Appendix*, p. 84. (b) *Supra*, p. 2, *et seq.* (c) *Vide supra*, p. 8.

relating to the Transference of Land, to the Service of Heirs, to Crown Charters, and to Heritable Securities, and the Act 13 and 14 Vict. c. 13, providing for the Simplification of the Titles of Congregations &c. to Real Property required for Religious Worship and the like,—and generally all other Acts or parts of Acts inconsistent with the present Statute.

The whole of the material provisions of these Statutes have been re-enacted in the present Act; and there is the useful *proviso* that the Repeal of said Statutes shall not be construed to lessen or affect any Right to which any Person may at the Time of such Repeal be entitled under the repealed Acts, or to lessen or affect any Liability then existing thereunder, or to invalidate or affect anything done prior to the Passing of the present Statute in pursuance of the Repealed Acts, or to revive or render necessary any Deed, Form, Procedure, or Practice by said Acts or part of Act repealed, abolished, or rendered unnecessary; and also that any Right to Lands constituted or acquired under the repealed Acts may be Completed, Transferred, or Extinguished either under the same or under this Act.

The effect of this proviso is, that where a person, at 31st December 1868, holds Lands including Heritable Securities under Conveyances, Missives of Sale, and the like, dated prior to that date, but has not completed his Title by formal Conveyance, Infestment, Registration, Notarial Instrument, or otherwise, he may complete his Title—and in the case of Securities may Discharge the same—in the forms of the repealed Acts if he shall prefer to use these in place of the forms of the present Act.

We propose to consider the remainder of the Statute as containing enactments falling under the following Heads and Divisions—viz. :

- I. IRREDEEMABLE RIGHTS.
- II. REDEEMABLE RIGHTS.
- III. GENERAL ENACTMENTS.
- IV. SCHEDULES.

I.—IRREDEEMABLE RIGHTS.

- (I.) FORM OF TITLES EMPLOYED IN CONSTITUTING AND TRANSMITTING IRREDEEMABLE RIGHTS, AND IN COMPLETING DISPONEE'S TITLE BY INFECTMENT, OR ITS EQUIVALENT.

I. CONSTITUTION AND TRANSMISSION OF IRREDEEMABLE RIGHTS—FORM OF DISPOSITION—SHORT CLAUSES.

The present Statute makes no material alteration upon the form of the Disposition *inter vivos*, or upon the phraseology of the Short Clauses of that deed, which were introduced originally by the Lands Transference Acts of 1847,(a) and modified and finally settled by the "Titles to Land Acts" of 1858 (b) and 1860.(c)

As the Act has been declared (d) to apply to all Lands by whatever Tenure held,—unless in so far as any enactment may be expressly or by necessary implication limited to Lands held by one Particular Tenure,—it has not, in the general case, been necessary to enact separate Provisions or Styles applicable to Lands held by Burgage Tenure, and to those not held by Burgage Tenure. As, however, the formal clauses of a Disposition of Burgage subjects are in some respects different from those of a Disposition of Lands not held by that Tenure, the Statute has kept the Forms of these Dispositions distinct not only in

(a) 10 and 11 Vict., c. 48; 10 and 11 Vict., c. 49.

(b) 21 and 22 Vict., c. 76.

(c) 28 and 24 Vict., c. 148.

(d) The Act, § 187.

the Schedule (B),(e) but also in those Sections in which the Meaning and Import of the Short Clauses of the Dispositions are declared. We shall therefore explain the clauses of these several Dispositions under separate heads.

I. DISPOSITION OF LANDS NOT HELD BY BURGAGE TENURE.

Obligation to Infest, Precept of Sasine, and Warrant of Infestment unnecessary.

The Act provides,(f) as had been done in the Act of 1858,(g) that it shall not be necessary to insert in any Conveyance of such Lands a Clause of Obligation to Infest,—or a Precept of Sasine,—or a Warrant of Infestment.

The *Obligation to Infest*—which before the Act of 1847 was a clause of considerable length—was by that Act (h) allowed to be in the following short Form:—

“I oblige myself to infest the said [*insert name of Disponee*] and his foresaids, to be holden a me [*or de me, or a me vel de me*].”

But as the Act of 1847 has been now repealed, and as no form of the now unnecessary Obligation to Infest is given in the present Statute, it will probably be necessary—in the event of it being desired for any purpose to insert such an Obligation in any Conveyance—to use the old form (i) of this clause.

The *Precept of Sasine* is not likely to be henceforth inserted in any Disposition. If any case, however, should occur rendering its insertion desirable, the form of the Precept will be found in the Infestment Act of 1845.(k)

The *Warrant of Infestment* was introduced by the

(e) The Act, Schedule (B), No. 1 and No. 2—See *Appendix*, p. 90.

(f) The Act, § 5—See *Appendix*, p. 4.

(g) 21 and 22 Vict., c. 76, § 5.

(h) 10 and 11 Vict., c. 48, § 1.

(i) See *Juridical Styles*, 4th ed., vol. i, p. 95. See *infra*, remarks on § 97.

(k) 8 and 9 Vict., c. 35, Schedule (A), which forms part of Schedule (A), No. 2, annexed to this Act. See *Appendix*, p. 89.

Lands Transference Acts of 1847 (*l*) into Decrees of Adjudication; but as these Statutes have been repealed, and have not been re-enacted as to this particular matter, the Clause in question is now entirely abolished.

Short Clauses of Disposition.

The Act then provides (*m*) that in any Conveyance of Lands not held by Burgage Tenure,

“in which all or any of the following clauses are necessarily or usually inserted, viz. :—

1. A Clause declaring the Term of Entry,
2. A Clause expressing the Manner of Holding,
3. A Procuratory or Clause of Resignation,
4. A Clause of Assignment of Writs and Evidents,
5. A Clause of Assignment of Rents,
6. A Clause of Obligation to free and relieve of Feuduties, and Casualties due to the Superior, and of Public Burdens,
7. A Clause of Warrandice,
8. A Procuratory or Clause of Registration for Preservation, or for Preservation and Execution,

it shall be lawful and competent to insert all or any of such Clauses in the Form or as nearly as may be in the Form No. 1 of Schedule (B), (*n*) hereunto annexed; and all or any of such clauses, if so inserted in any such Conveyance, or in any Conveyance dated after the 30th day of September 1847, shall have the meaning and effect assigned to them in the 6th and 8th sections of this Act, and shall be as valid, effectual, and operative, to all intents, effects, and purposes, as if the same had been expressed in the fuller mode or form generally in use prior to the said 30th day of September 1847.”

These Clauses we shall now explain in their order :—

(1) *Term of Entry.*

The Short Clause in the Schedule (*o*) is—

“With Entry at the Term of [*here specify the date of Entry*].

This is the form originally introduced by the Act of 1847 (*p*), and is to follow the Inductive and Dispositive Clauses of the Deed. Before 1847 the Term of Entry was

(*l*) 10 and 11 Vict., c. 48 and c. 49.

(*m*) The Act, § 5.

(*n*) The Act, Schedule (B), No. 1. See *Appendix*, p. 90.

(*o*) *Id.*

(*p*) 10 and 11 Vict., c. 48, Schedule (A).

inserted by way of Declaration in the Clause of Obligation to relieve the Disponee of Public Burdens, &c.

(2) *Manner of Holding.*

The Clause expressing the Manner of Holding, which comes in place of the Old Obligation to Infeft, is to follow the Term of Entry, and is to be in the Form (*q*) which has been in general use since the passing of the Act of 1858, although its precise terms have not until now been given in any Statute. The words are—

“to be holden the said Lands and others [*or Subjects*] a me [*or a me vel de me, as the case may be*].

The Import and Meaning of this Clause were stated in 10 and 11 Vict. c. 48, § 2 and in the Titles to Land Act of 1858, and were more fully explained in the Act of 1860.(*r*) The present Act(*s*) contains an ampler and fuller explanation than either of the former Statutes; and it declares that

“If the Lands have been or shall be conveyed to be holden *a me* only, the Clause so expressing the Manner of Holding shall imply that the Lands are to be holden from the Grantor of and under his immediate lawful Superiors, in the same manner as the Grantor or his Predecessors or Authors held, hold, or might have holden the same, and that the Title of the Disponee may be completed either by Resignation or Confirmation, or both, the one without prejudice of the other; and if the Lands shall be disposed to be holden *a me vel de me*, the Clause so expressing the Manner of Holding shall imply that the Lands are either to be holden of the Grantor in free blench, for payment of a penny *Scots* in name of blench farm, at *Whitsunday* yearly, upon the ground of the lands, if asked only, and freeing and relieving the Grantor of all Feuduties and other Duties and Services exigible out of the said Lands by his immediate lawful Superiors thereof, or to be holden from the Grantor of and under his immediate lawful Superiors, in the same manner as the Grantor or his Predecessors or Authors held, hold, or might have holden the same, and that the Title of the Disponee may be completed either by Resignation, or Confirmation, or both, the one without prejudice of the other; and where no Manner of Holding is

(*q*) The Act, Schedule (B.) No. 1, *Appendix*, p. 90.

(*r*) 23 and 24 Vict., c. 143, § 36.

(*s*) The Act, § 6.

expressed, the Conveyance shall be held to imply that the Lands are to be holden in the same manner as if the Conveyance contained a clause expressing the Manner of Holding to be *a me vel de me*, where the Titles of the Lands contain no Prohibition against Subinfeudation, or against an alternative Holding, and as if the Conveyance contained a Clause expressing the Manner of Holding to be *a me*, where the Titles contain such Prohibitions, or either of them: Provided always that where the said Titles contain such Prohibitions, or either of them, the Conveyance shall, if an Entry in the Lands therein specified or thereby conveyed be expedite with the Superior within twelve months from the date of such Conveyance, have the same preference in all respects from the date of recording the Conveyance or any Instrument thereon in the appropriate Register of Sasines, as if such Conveyance contained a Clause expressing the Manner of Holding to be *a me vel de me*, and the Titles did not contain any Prohibition against Subinfeudation or against an alternative Holding: And provided always that nothing contained in this Act shall be construed to take away or impair any of the Rights and Remedies competent to a Superior against his Vassal lying out unentered."

It will be observed that this clause does not provide for the case of a Conveyance with a simple "*de me*" holding. It was unnecessary to do so, as such a Conveyance is truly of the nature of an Original Feu Right, and must contain within itself the Terms and Manner of Holding, according to the Contract between the parties.

The Rights of Superiors, which are to a certain extent saved by the concluding proviso of this Section of the Act, are more fully protected by the 147th Section, which re-enacts the 28th Section of the Titles to Land Act 1858, and provides that

"Where the Investiture of any Lands has imposed or shall impose a Prohibition against Subinfeudation or against Alternative Holding, nothing contained in this Act shall operate to authorise Subinfeudation or an Alternative Holding in respect to such Lands; and nothing in this Act contained shall be construed to take away or impair any of the Rights or Remedies competent to a Superior against his Vassal lying out unentered."

In construing these Sections of the Act, it must be kept in mind that a Conveyance with an Alternative

manner of Holding is not a Contravention of a Prohibition against Subinfeudation—one of the objects of such a conveyance being to place the Disponee in the position of being able to enter with the Superior, and to compel the superior to receive him as Vassal. (See the case of *Colquhoun v. Walker*, 17th May 1867, 5 Macph. 773.)

(3) *Clause of Resignation.*

The words of the Schedule are (*t*)

“And I Resign the said Lands and others (*or* Subjects) for new Infefment or Investiture.”

This clause was introduced and defined by the Act of 1847, (*u*) and had a fuller Signification attached to it by the Act of 1858, (*v*) and in conformity therewith it is now declared to be (*w*) equivalent to a

“Procuratory of Resignation *in favorem* only in the terms in use prior to 30th September 1847, unless specially expressed to be a Resignation *ad remanentiam*, in which case it shall be equivalent to a Procuratory of Resignation *ad remanentiam* according to the form in use prior to the said date.”

(4) *Assignment of Writs, &c.*

This clause is in the Form introduced by the Act of 1847, (*u*) and is thus expressed,

“And I Assign the Writs and have delivered the same according to Inventory.”

It is declared, (*x*) as had been done by the Act of 1847, that this clause shall, unless specially qualified, be held

“to import an absolute and unconditional Assignment to such Writs and Evidents, and to all open Procuratories, Clauses, and Precepts, if any, and as the Case may be, therein contained, and to all unrecorded Conveyances to which the Disponer has right.”

(5) *Assignment of Rents.*

This clause,

“And I Assign the Rents,”

(*t*) The Act Schedule (B) No. 1, *Appendix* p. 90.

(*u*) 10 and 11 Vict. c. 48, § 3.

(*w*) The Act, § 8.

(*v*) 21 and 22 Vict. c. 76, § 5.

(*x*) The Act, § 8.

is in the form introduced by the Act of 1847,(y) and it is declared (z) that it

“shall, unless specially qualified, be held to import an Assignment to the Rents to become due for the Possession following the Term of Entry, according to the legal and not the conventional Terms, unless in the case of forehand Rents, in which case it shall be held to import an Assignment to the Rents payable at the conventional Terms subsequent to the Date of Entry.”

(6) *Obligation to free of Public Burdens, &c.*

This clause,

“And I Bind myself to free and relieve the said Disponee and his foresaids of all Feu-duties, Casualties, and public burdens,”

is, with a trifling alteration, in the form introduced by the Act of 1847.(y) Instead of repeating the Name of the Disponee, which increased the length of the Deed without necessity or advantage, the clause now simply grants the Obligation in favour of

“the said disponee.”

It is declared,(z) as had been done in the Act of 1847,(y) that the Clause

“shall, unless specially qualified, be held to import an Obligation to relieve of all Feu-duties or other Duties and Services or Casualties payable or prestable to the Superior, and of all Public, Parochial, and Local Burdens due from or on account of the Lands conveyed prior to the Date of Entry.”

(7) *Warrandice.*

This clause,

“And I grant Warrandice,”

is also in the form introduced by the Act 1847,(y) and it is declared(z) that it

“shall, unless specially qualified, be held to imply Absolute Warrandice as regards the Lands and Writs and Evidents, and Warrandice from Fact and Deed as regards the Rents.”

(y) 10 and 11 Vict. c. 48, § 3.

(z) The Act, § 8.

✿ (8) *Consent to Registration.*

This clause,

“And I consent to Registration hereof for Preservation [or for Preservation and Execution ”].

is in the form introduced by the Act of 1847,(a) and it is declared (b) that it is to have the meaning assigned to it in the 138th Section of this Act. It is there (c) enacted that this Short Clause of Registration,

“when occurring in any Deed or Conveyance under this Act, or in any Deed or Writing or Document of whatsoever nature, and whether relating to Lands or not, shall, unless specially qualified, import a Consent to Registration and a Procuratory of Registration in the Books of Council and Session, or other Judges Books competent, therein to remain for Preservation; and also, if for Execution, that Letters of Horning, and all necessary Execution, shall pass thereon, upon Six Days charge, on a Decree to be interponed thereto in common form.”

The “*Titles to Land Act* 1860,”(d) had allowed the use of this Short Clause in all Deeds and Writings whatever, but the frequency with which the old Procuratory of Registration in its long form is still to be met in practice in Deeds not relating to Land would seem to indicate that the competency of using the short form in such Deeds has hitherto been overlooked by many Conveyancers.

Testing Clause.

This clause is in common form, but the doubt as to the competency of Women to act as Instrumentary Witnesses, which has hitherto generally prevented them from acting in that capacity, has now been removed by the present Act,(e) which provides that,

“It shall be competent for any Female Person of the Age of Fourteen years or upwards, and not subject to any Legal

(a) 10 and 11 Vict. c. 48, § 3.

(b) The Act, § 8.

(c) The Act, § 138.

(d) 23 and 24 Vict. c. 143, § 30.

(e) The Act, § 139.

Incapacity, to act as an Instrumentary Witness in the same manner as any Male Person of that Age, who is subject to no Legal Incapacity, can act according to the present Law and Practice, and it shall not be competent to challenge any Deed or Conveyance or Writing or Document of whatever Nature, whether executed before or after the Passing of this Act, on the ground that any Instrumentary Witness thereto was a Female Person."

The Clause is retrospective in its operation, and applies to all Deeds, &c., of every kind, at whatever time executed. The "Legal Incapacity" which is still to prevent Women from being Instrumentary Witnesses, is Legal Incapacity of the same kind as that which at present disqualifies Male Persons. Such Incapacity arises from Non-age,—which for the purposes of this Section ceases at fourteen in Females as well as Males,—or from some personal and individual Defect, such as Insanity, Blindness, Interest, and the like, and will not include *Marriage* as disqualifying a "Female Person" from acting as an Instrumentary Witness. At the same time, it will be prudent for Married Women to abstain from being Witnesses to Deeds granted by their Husbands, although, in the general case, liability to be influenced by the grantor of a Deed does not disqualify a person from being a witness to the Deed.

II. DISPOSITION OF LANDS HELD BY BURGAGE TENURE.

Obligation to infest, and Procuratory and Clause of Resignation unnecessary.

The Act (*g*) declares, as had been done by the Act of 1860, (*h*) that it shall not be necessary in any Conveyance of Burgage Lands to insert a Clause of Obligation to Infest, or a Procuratory or Clause of Resignation; and that every Conveyance of Burgage Lands shall imply that the Lands are to be holden of Her Majesty in free Burgage for Services of Burgh used and wont.

Although this provision renders it unnecessary to ex-

(*g*) The Act, § 7.

(*h*) 23 and 24 Vict., c. 143, § 6.

press at full length the holding *more Burgi*, it has been deemed advisable, in the Style of the Disposition,⁽ⁱ⁾ to insert the words,

“to be holden, the said Lands and others [or subjects] of Her Majesty, in free Burgage,”

in order that it may be seen from the Deed itself that the Lands are held Burgage, and that the Deed, or the Instrument to follow thereon, must be recorded in the Burgh Register of Sasines, and not in the General Register.

Short Clauses of Disposition.

The Act provides (*k*) for the use of Short Clauses similar to those of the Disposition of Lands held by ordinary Tenure, and it declares that in any Conveyance of Burgage Subjects in which

“all or any of the following Clauses are necessarily or usually inserted, viz. :—

1. A Clause declaring the Term of Entry,
2. A Clause of Obligation to Free and Relieve of Ground-annual, Cess, Annuity, and other Public Burdens,
3. A Clause of Assignment of Rents,
4. A Clause of Assignment of Writs and Evidents,
5. A Clause of Warrandice,
6. And a Clause of Registration for Preservation and Execution,

it shall be lawful and competent to insert all or any of such Clauses in the form or as nearly as may be in the form No. 2 of Schedule (B) hereto annexed; and all or any of such Clauses, if so inserted in any such conveyance, or in any similar conveyance dated after the 30th day of *September* 1847, shall have the meaning and effect assigned to them in the 8th section of this Act, and shall be as valid, effectual, and operative to all intents and purposes as if they had been expressed in the fuller mode or form generally in use prior to the said 30th day of *September* 1847.”

These Clauses we shall shortly notice in their order.

(i) The Act, Schedule (B) No. 2. See *Appendix*, p. 90.

(k) The Act, § 7.

(1) *Term of Entry.*(2) *Assignment of Writs, &c.*(3) *Assignment of Rents.*

These clauses are identical in form and signification with the corresponding clauses in the Disposition of Lands not held by Burgage tenure, our remarks upon which (1) are here referred to, with this explanation, that the Clauses in question were first introduced into Dispositions of Burgage subjects by the Act 10 and 11 Vict., . 49.

(4) *Obligation to Relieve of Public Burdens, &c.*

This clause is substantially the same as the corresponding clause in an Ordinary Disposition—the only distinction being, that the enumeration of the Burdens, &c., is somewhat different—Feu-duties and Services being omitted and

“ Ground Annual, Cess, and Annuity ”

being added. See Remarks on this clause *supra*, p. 26.

(5) *Warrandice.*(6) *Clause of Registration.**Testing Clause.*

See Remarks on corresponding clauses of the Ordinary Disposition, *supra*, pp. 26 and 27.

It should here be observed, that by Sect. 152 of the Act all the Provisions of the Act as to Burgage subjects are to be applicable to subjects held in Paisley by the peculiar Tenure of Booking.

III. CLAUSES WHICH MAY BE COMPETENTLY INSERTED IN ALL CONVEYANCES OF LANDS BY WHATEVER TENURE HELD.

Very great inconvenience was felt, and much needless expense was incurred in the preparation of Deeds under the old system of Conveyancing, owing to the necessity

(1) *Vide Supra*, pp. 22, 25, and 26.

of inserting at full length in every Writ, in a progress of Titles, the Description of the Lands,—the Real Burdens and Conditions under which the Lands were held,—and the Conditions and Fetters of the original Deed of Entail, if the Lands were held under such a Deed.

It was therefore deemed desirable to simplify and curtail all such Deeds, by substituting for the full insertion of the Description of the Lands,—Real Burdens, &c., and Conditions and Fetters of Entail,—a Reference to these as appearing in some prior Writ of the Progress already recorded in some Public Register.

It was also found to be extremely difficult, in framing a Deed of Entail in terms of the Act 1685, c. 22, to express the necessary Prohibitory, Irritant, and Resolutive Clauses in such a manner as to render the Deed a valid and binding Tailzie. A short and effectual substitute for the insertion of such clauses was therefore much desiderated.

The Statutes which have been repealed and consolidated by the present Act provided, to a considerable extent, for the accomplishment of all these objects; and the present Act has extended their provisions to several cases not contemplated by the prior Acts.

We shall now point out the manner in which the present Act deals with these various matters.

(1) *Clauses of Deed of Entail.*

By the Act 1685, c. 22, the Tailzie which, in its ordinary form is a Disposition, although it may be in the form of a Procuratory of Resignation or a Bond of Tailzie, required,—in order to be effectual,—to contain substantive Prohibitions against Alienation, Contraction of Debt, and Alteration of the Order of Succession,—and these Prohibitions required to be fenced with Irritant and Resolutive Clauses. The “Rutherford Act”^(m) dispensed with the insertion of the Irritant and Resolutive Clauses in every Deed of Entail, provided it contained a Clause authorising the Registra-

(m) 11 and 12 Vict. c. 36.

tion of the Deed in the Register of Tailzies;—the Titles to Land Act of 1858,(*n*) dispensed, under similar conditions, with the insertion of the Prohibitory Clauses in Entails of Lands not held by Burgage Tenure;—and the Titles to Land Act of 1860 (*o*) contained a similar dispensation with regard to Entails of Lands held by Burgage Tenure.

All of these enactments have now been consolidated in the present Act,(*p*) which provides that

“where a Deed of Entail contains an express Clause authorising Registration of the Deed in the Register of Tailzies, it shall not be necessary to insert Clauses of Prohibition against Alienation, Contracting Debt, and Altering the Order of Succession, and Irritant and Resolutive clauses, or any of them; and such Clause of Registration contained in any Deed of Entail of Lands not held by Burgage Tenure, dated on or after the 1st day of *October* 1858, or of Lands held by Burgage Tenure, dated on or after the 10th day of *October* 1860, shall have in every respect the same Operation and Effect as if such Clauses of Prohibition, and such Irritant and Resolutive Clauses, had been inserted in such Deed of Entail, any Law or Practice to the contrary notwithstanding.”

(2) *Conditions of Entail may be referred to, as set forth in a Recorded Deed or Instrument.*

Under the Act 1685, c. 22, it was essential, in order to preserve the effect of the Tailzie, as against creditors, or parties transacting with an heir of entail onerously and *in bona fide*, that the Destination of Heirs, and the Conditions of the Entail—*i.e.*, the Prohibitory, Irritant and Resolutive Clauses—should be inserted at full length in the Sasine to follow on the entail, and in all subsequent Investitures, as well as in Excambions of the Entailed Lands, and in the Titles of Lands, to be added to an estate already entailed, or to be entailed on the Heirs under an existing Tailzie.

The Acts of 1847 (*q*) dispensed with the full insertion of the Conditions of Entail in Petitions for Special Service,

(*n*) 21 and 22 Vict., c. 76, § 18.

(*o*) 23 and 24 Vict. c. 143, § 12.

(*p*) The Act, § 14.

(*q*) 10 and 11 Vict., c. 47, § 5; 10 and 11 Vict., c. 48, § 4; 10 and 11 Vict., c. 49, § 3; 10 and 11 Vict., c. 51, § 26.

in Crown Charters, and in all Conveyances, Procuratories, Decrees of Adjudication, Charters and Precepts from Subjects-Superior, Instruments of Sasine, and generally in all Writs necessary for the renewal of the Investiture of the Entailed Lands, provided reference was made in the form prescribed by these Acts to the Conditions as at length set forth in the Recorded Deed of Entail, if recorded in the Register of Tailzies, or in some Deed or Instrument forming part of the Progress of Titles recorded in the Register of Sasines. The Titles to Land Acts of 1858^(r) and 1860^(s) substituted a similar reference for the full insertion of the Destination of Heirs in Renewals of the Investiture; and the latter Act^(t) farther allowed the Destination of Heirs and the Conditions of Entail to be so referred to in Excambions of Entailed Lands. These several provisions have now been all consolidated in the present Act, which provides in § 9 that

“ It shall not be necessary, in any Conveyance or Deed of or relating to Lands held under a Deed of Entail, or of or relating to Lands obtained by Excambion in exchange for Lands held under any Deed of Entail, or of or relating to Lands purchased or acquired for the purpose of being added to any Estate held under any Deed of Entail, or entailed on the Heirs and under the Conditions specified in any Deed of Entail, to insert the Destination of Heirs, or the Conditions, Provisions, and Prohibitory, Irritant and Resolutive Clauses, or Clause authorising Registration in the Register of Tailzies, contained in any such Deed of Entail; provided the same shall in such Conveyance or Deed be specially referred to as set forth at full length in such Deed of Entail recorded in the Register of Tailzies, if the same shall have been so recorded, or as set forth at full length in any Conveyance or Deed recorded in the appropriate Register of Sasines, and forming part of the Progress of Title Deeds of the said Lands held under such Deed of Entail, such reference being made as nearly as may be in the terms set forth in Schedule (C) hereto annexed; and the Reference to such Destination, or to such Conditions, Provisions, and Prohibitory, Irritant and

(r) 21 & 22 Vict., c. 76, § 17.

(t) *Ibid.*, § 27.

(s) 23 and 24 Vict., c. 148, § 11.

Resolutive Clauses or Clause authorising Registration in the Register of Tailzies, if so made in any such Conveyance or Deed, whether dated prior or subsequent to the Commencement of this Act, shall be equivalent to the full insertion thereof, and shall, to all intents and in all questions whatever, whether *inter hæredes* or with third parties, have the same legal effect as if the same had been inserted exactly as they are expressed in the recorded Deed of Entail, Conveyance, or Deed referred to, notwithstanding any Law or Practice to the contrary, or any Injunction to the contrary contained in such Deed of Entail, or any Enactments or Provisions to the contrary contained in an Act of the Parliament of *Scotland* made in the year One thousand six hundred and eighty-five, intituled *An Act concerning Tailzies*, or in any other Act or Acts of the Parliament of *Scotland* or of *Great Britain*, or of the United Kingdom of *Great Britain and Ireland*, now in force."

This Section, it will be seen, allows the Reference to be made in all cases *either* to the Deed of Entail as recorded in the Register of Tailzies, *or* to a Deed or Instrument as recorded in the Register of Sasines, and forming part of the Progress of Titles of the Lands—in this respect differing from the Act 10 and 11 Vict. c. 49, § 3, which allowed the reference to be made to a Deed or Instrument recorded in the Burgh Register of Sasines only in those cases in which the Deed of Entail had not been recorded in the Register of Tailzies.

The Deeds, &c., in which such a reference is now made competent are very numerous. Under the General Terms "Deed," and "Conveyance," the Interpretation Clause of the Act includes a great variety of Writs, in all of which, in so far as applicable to Lands held under a Deed of Entail, the Reference allowed by § 9 is now competent. It is unnecessary to specify them here as the reader will find them printed on pages 2 and 3 of the *Appendix*. It may be noticed, however, that the Reference is now for the first time made competent in a class of Deeds in which it has hitherto been essential to insert both the Destination and the Fetters of Entail at full length, viz., in Conveyances of Land purchased or acquired for the purpose of being added to an Estate already Entailed, or of being entailed on the

Heirs, and under the Conditions, specified in a Deed of Entail already existing. Where the Deed of Entail, to which Reference is to be made, does not contain Prohibitory, Irritant, and Resolutive Clauses, but contains a Clause authorising Registration in the Register of Tailzies, the Reference will be to that Clause.

The form in which the reference is to be made is given in Schedule (C) annexed to the Act.^(u)

(3) *Real Burdens, &c. may be referred to.*

The Acts of 1847, enumerated in Note (q), p. 32, and the Heritable Securities Act of the same year,^(v) authorised in Deeds or Conveyances of Lands held under Real Burdens and Conditions, &c., reference to be made to such Real Burdens, &c., instead of full insertion thereof, provided the same were referred to as set forth in the Instrument, as recorded in the Register of Sasines, in which the same were first inserted, or in any subsequent Instrument so recorded and forming part of the Progress of Titles of the Lands. The Titles to Land Act 1860, § 31, allowed such reference to be made to any Conveyance or Notarial Instrument recorded under the provisions of that Act or of the Titles to Land Act of 1858. The present Act,^(w) consolidates all these provisions, and gives, in Schedule D,^(x) the Form in which such reference is to be made. As the Terms of this Section and Schedule are, with some slight verbal alterations, mere Re-enactments of the corresponding Sections and Schedules of the repealed Acts, it is unnecessary here to do more than refer the reader to the Act and Schedules which are printed in the Appendix. It will of course be kept in view, that owing to the extensive meaning attached by the Interpretation Clause of the Act to the words "Deed" and "Conveyance," the Deeds in which, and the Recorded

(u) The Act, Schedule (C). See *Appendix* 91.

(v) 10 and 11 Vict., c. 50, § 4.

(w) The Act, § 10. *Appendix*, p. 8.

(x) *Ib.*, Schedule (D). *Appendix*, p. 91.

Deeds to which reference may now be made, are somewhat more numerous than under the Repealed Acts.

(4) *Description of Lands may be referred to.*

The Act provides (y) that

“In all cases where any Lands have been particularly described in any prior Conveyance or Deed of or relating thereto recorded in the appropriate Register of Sasines, it shall not be necessary in any subsequent Conveyance or Deed conveying or referring to the whole or any part of such Lands to repeat the particular Description of the Lands at length, but it shall be sufficient to specify some Leading Name or Names, or some distinctive Description of the lands, as contained in the Titles thereto, and to specify the Name of the County, and, where the lands are held by Burgage Tenure, or by any similar Tenure, the Name of the Burgh and County in which they are situated, and to refer to the particular Description of such Lands, as contained in such prior Conveyance or Deed so recorded in or as nearly as may be in the Form set forth in Schedule (E)(z) hereto annexed; and the Specification and Reference so made in any such subsequent Conveyance or Deed, whether dated prior or subsequent to the Commencement of this Act, shall be held to be equivalent to the full Insertion of the particular Description contained in such prior Conveyance or Deed, and shall have the same effect as if the particular Description had been inserted in such subsequent Conveyance or Deed exactly as it is set forth in such prior Conveyance or Deed.”

“The Titles to Land Act 1858,” § 15, was the first Statute in which such reference was authorised, and it provided that it should be

“sufficient to specify the Leading Name or Names or other short distinctive Description of the Lands Conveyed, and the Name of the County and Parish, or supposed Parish, and to refer,” &c.

That Section was repealed by the 34 Section of the “Titles to Land Act 1860,” which provided that it should be

“sufficient to specify the Name of the County, and where the Lands are held Burgage the Name of the Burgh and County in which they [the Lands] are situated, and to refer,” &c.

(y) The Act, § 11.

(z) The Act, Schedule (E). *Appendix*, p. 92.

It was found in practice, however, that the bare reference to the County, as required by the latter Act, was not sufficient to identify the Lands, and rendered Searches of the Register very laborious, and involved risk of error. In the present Act accordingly, a modified form of specification of the Lands has been introduced. The Name of the County, and of the Burgh and County when the Lands are held Burgage, is still required, but the name of the Parish or supposed Parish is dispensed with, and the specification of the Leading Name or Names of the Lands, or some other short Distinctive Description of the Lands, "*as contained in the Titles thereto*," has been rendered necessary. This provision will, it is hoped, do away with the vagueness and uncertainty arising from the use of the form prescribed by the Act of 1860, and by limiting the Name or Names, or other Short Distinctive Description, to such as are contained in the Titles to the Property, may enable Searches to be conducted with greater facility and with less risk of error.

Under the Interpretation Clause of the Act taken in connection with § 24, it is now competent to use the Short Description and Reference in Petitions for Appointment of Judicial Factors and for Special Powers to them to make up Titles to the Lands under their management—thus saving much expense in printing such Petitions. It will also be competent to make a similar reference in "Discharges," as falling under the Category of a Deed or Writing by which Lands or Rights in Lands are Discharged.

(5) *Lands may be designed under one General Name.*

The Act (a) further provides that where several Lands are comprehended in one Conveyance in favour of the same person or persons, a Clause may be inserted declaring that the whole shall be in future known and designed by one General Name, to be therein specified, or that certain of the Lands shall be known and designed by one General

(a) The Act, § 13.

Name and certain other Lands by another General Name, and on such Conveyance, or an Instrument following thereon, being recorded in the Register of Sasines, that General Name may be used in all subsequent Conveyances and Discharges of the Lands in place of the full Description, provided that reference be made to a prior recorded Conveyance, or Deed, or Instrument, in which the full Description and the Clause declaring the General Name or Names are set forth,—the reference being made in terms of Schedule (G) annexed to the Act.^(b)

This Section substantially re-enacts § 16 of the Titles to Land Act 1858, and extends the provisions thereof to Burgage Subjects. The Schedule is nearly the same as Schedule (L), No. 2, of the Act of 1858, from which, however it differs in using the words "*General Name or Names*" in place of "*Leading Name or Names*," thus removing a difficulty pointed out in Professor M. Bell's Lectures, i, 556.

II.—COMPLETION OF TITLE OF DISPONEE BY INFESTMENT OR ITS EQUIVALENT.

(1) *Infestment by Instrument of Sasine.*

The Interpretation Clause of the Act declares that

"The words 'Infest' and 'Infestment' shall extend to and include the due Registration, in the appropriate Register of Sasines, of any Deed or Conveyance, whether before or after the Commencement of this Act, by which Registration a Real Right to Lands has been or shall be constituted."

And by another part of the same clause the words "Deed" and "Conveyance" include "Instruments," which again are declared to extend to and include

"all Notarial Instruments authorised by this Act, or by any of the Acts hereby repealed, and also all Instruments of sasine, Instruments of Resignation *ad remanentiam*, Instruments of Resignation and Sasine, and Instruments of Cognition and Sasine, and Instruments of Cognition:"

The Act, while rendering unnecessary the use of Instruments of Sasine—of Resignation *ad remanentiam*—of

(b) The Act, Schedule (G), *Appendix*, p. 93.

Resignation and Sasine—of Cognition and Sasine—and of Cognition—does not abolish these Instruments; on the contrary it expressly^(c) declares the use of these old forms to be still competent.

In the case of Lands *not held by Burgage Tenure* a simple mode of expeding Sasine and a short Form of the Instrument are provided for by the Act of 1845, which stands unrepealed as regards these matters, and which is No. 2 of Schedule (A) annexed to the present Act, and will be found in the Appendix.^(d)

In the case of Lands *held by Burgage Tenure*,—as the Burgage Act of 1847,^(e) which contained the modern Form of the Instrument of Sasine, or of Resignation and Sasine, applicable to such Lands, has been wholly repealed, it was necessary to re-enact the Form in the present Act in order to meet the case, which sometimes arises, of such an Instrument being required. This has been done by § 16 ^(f) of the Act, and the relative Schedule (I).^(g)

(2) *Infestment by Recording Conveyance, &c., in Register of Sasines.*

But although the Instruments referred to have not been abolished, their use has been rendered virtually unnecessary by the successive enactments of the repealed Statutes now consolidated in the present Act, in virtue of which the Registration of a Conveyance in the appropriate Register of Sasines has the same operation and effect as if the Conveyance had been followed by an Instrument of Sasine, or of Resignation and Sasine, as the case may be, duly expedited and recorded as of the date of recording the Conveyance. We have already^(h) given the history of the rise and progress of this simple and effectual substitute for the old method of Infestment by Sasine. It was, as we have shown,

(c) The Act, § 163.

(d) 8 and 9 Vict. c. 35. See Appendix, pp. 86 to 90, also *supra* p. 8.

(e) 10 and 11 Vict. c. 49. (f) The Act, § 16.

(g) The Act, Schedule (I). See Appendix, p. 95.

(h) *Vide supra* p. 1, *et seq.*

introduced by the Heritable Securities Act of 1845,⁽ⁱ⁾ in the case of Assignations of Heritable Securities constituted by Infestment; and it was extended to Original Bonds and Dispositions in Security by the Heritable Securities Act of 1847,^(k) to Conveyances of Land not held by Burgage Tenure by the Titles to Land Act of 1858,^(l) and to Conveyances of Burgage Rights by the Titles to Land Act 1860.^(m) The present Act consolidates these enactments; and although, for the sake of convenience, some of the provisions of this section are repeated in that part of the Act which deals with Heritable Securities, there can be no doubt that all the provisions of this section apply not merely to Irredeemable, but also to Redeemable Rights. The words of the section ⁽ⁿ⁾ are as follows:—

“ § 15. It shall not be necessary towards obtaining Infestment in Land to expedite and record in the case of Lands not held by Burgage Tenure an Instrument of Sasine, or, in the case of Lands held by Burgage Tenure, an Instrument of Resignation and Sasine, on any Conveyance or Deed of or relating to such Lands, but it shall be competent and sufficient for the Person or Persons in whose favour the Conveyance or Deed has been or shall be granted or conceived, instead of expediting and recording such Instrument of Sasine or of Resignation and Sasine, to record the Conveyance or Deed itself in the appropriate Register of Sasines; and the Conveyance or Deed being presented for Registration in such Register, with a Warrant of Registration thereon, in or as nearly as may be in the form No. 1 of Schedule (H) hereto annexed, and being so recorded along with such Warrant, shall have the same Legal Force and Effect in all respects as if the Conveyance or Deed so recorded had been followed by an Instrument of Sasine in the case of Lands not held by Burgage Tenure, or, in the case of Lands held by Burgage Tenure, by an Instrument of Resignation and Sasine expedite in favour of the Person on whose behalf the Conveyance or Deed is presented for Registration, and recorded in the appropriate Register of Sasines, at the Date of recording the said Conveyance or Deed; and where it is desired to give Investiture *propriis manibus*, it shall be competent for the Person in whose favour the Conveyance or

(i) 8 and 9 Vict., c. 31, §§ 1, 5, 6. (m) 23 and 24 Vict., c. 143, § 3.

(k) 10 and 11 Vict., c. 50, §§ 1, 6, 10. (n) The Act, § 15.

(l) 21 and 22 Vict., c. 76, § 1.

Deed has been or shall be granted or conceived to record the Conveyance or Deed itself in the Register of Sasines applicable to the Lands therein contained, with a Warrant of Registration thereon in or as nearly as may be in the form of No. 3 of Schedule (H) hereto annexed, signed by such Person; and such Conveyance or Deed being so recorded along with such Warrant shall have the same legal Force and Effect in all respects as if the Conveyance or Deed so recorded had been followed by an Instrument of Sasine, or of Resignation and Sasine *proprio manibus* expedite in favour of the Wife of such Person, and signed by such Person, and recorded at the Date of recording the said Conveyance or Deed according to the Law and Practice heretofore in force."

A few observations upon this—one of the most important enactments of the whole Statute—may not be deemed out of place.

1. The use of the word "*Infeftment*" at the beginning of the section, taken in connection with the definition of that word in the Interpretation Clause, shows that a person is to be regarded as "*Infeft*" in Lands, whether the Real Right thereto has been constituted by a Recorded Sasine under the former practice or by a Recorded Conveyance under the new system.

2. The very extensive class of Deeds and Conveyances, the Registration of which is to be regarded as "*Infeftment*" in favour of the person on whose behalf the Registration is made, will be found enumerated in the Interpretation Clause of the Act. It is hardly necessary to point out that "*Instruments*," "*Summonses*," and "*Petitions*," although included in that enumeration, are not "*Deeds*" or "*Conveyances*" within the sense and meaning of the 15th section.

3. The "*Lands*" referred to in this section are Lands as defined in the Interpretation Clause, viz.,

"All Heritable Subjects, Securities,^(o) and Rights."

4. The "*Conveyance*," before being recorded, must have written or indorsed upon it a "*Warrant of Registration*," in the form No. 1. of Schedule (H).^(p) This "*Warrant*" was

(o) *Vide supra*, p. 40.

(p) The Act, Schedule (H). See *Appendix*, p. 94.

first introduced by the Titles to Land Act 1858, and was extended to Burgage Subjects by the Act of 1860; the object being that the Name and Designation of the party who was to be infert by the Registration of the Conveyance should appear distinctly, both on the Conveyance when recorded, and in the Register of Sasines. Some such device was rendered necessary by the disuse of the Instrument of Sasine, which contained, *in græmio*, the requisite particulars, and thus secured their publication in the Register of Sasines. And it was especially necessary where a Conveyance, conceived in favour of several persons, was being recorded in favour of only one of them.

In consequence, however, of the great alteration made by the "Land Registers (Scotland) Act 1868,"^(g) upon the system of Registration, by abolishing the Particular Registers of Sasines throughout Scotland, and directing the General Register of Sasines to be so kept that the Writs applicable to each County shall be entered in a separate series of Presentment Books, and minuted in a separate series of Minute Books, and engrossed in a separate series of Register Volumes, it became necessary, in order to facilitate and secure the due Registration of each Writ in the appropriate series of Books and Volumes, that the Warrant of Registration should specify the County or Counties in the Books applicable to which the Conveyance, &c., should be recorded. And accordingly, that Act contains, in Schedule (A), annexed thereto, the forms in which such Warrants are to be henceforth expressed. These forms have been adopted in the present Act,^(r) and have been also made applicable to Writs relating to Burgage Subjects with which the "Land Registers Act" does not deal.

The Land Registers Act farther enacts, § 4, that *all*

(g) 31 and 32 Vict., c. 64. See *Appendix*, p. 133 to 144.

(r) The Act, Schedule (F), No. 2, *Appendix*, p. 93, and Schedule (H), No. 1 and 2, *Appendix*, p. 94. See also Schedules of Land Registers Act, *Appendix*, pp. 142, 143.

Writs presented for Registration shall have a Warrant of Registration indorsed thereon, and this provision has been re-enacted in the present Act(s) in the following terms:—

§ 141. “ All Conveyances and Deeds, and all Writings whatsoever which may be recorded in any Register of Sasines, shall, previous to being presented for Registration, have a

(s) The Act, § 141. Although both the Land Registers Act and the present Act received the Royal assent on 31st July 1868, it was at the time when the former left the House of Lords uncertain whether the latter could be carried through the two Houses of Parliament before the close of the Session. The 4th section of the former Act accordingly dealt with the Titles to Land Act of 1858 as a subsisting Act, and declared that the new form of Warrant should supersede the Form introduced by that Act. The section referred to is as follows:—‘ § 4. All Writs which may be recorded in ‘ the General Register of Sasines in terms of this Act shall, previous to ‘ being presented for Registration, have a Warrant indorsed or written ‘ thereon in or as nearly as may be in the Form of Schedule (A), No. 1, ‘ hereto annexed, specifying the Person or Persons on whose Behalf the ‘ Writ is so presented, and the County or Counties in which the Lands to ‘ which such Writ has reference are situated, and signed by such Person or ‘ Persons, or his or their Agent or Agents; and the Form of Warrant of ‘ Registration hereby prescribed shall supersede and be used in place of the ‘ Form of Warrant of Registration as given in Schedule (A), No. 1, annexed ‘ to “ The Titles to Land (Scotland) Act 1858.” And in the case of an ‘ Assignment of an unrecorded Conveyance in virtue of the Provisions of ‘ the Thirteenth Section of the said “ Titles to Land (Scotland) Act 1858,” ‘ the Warrant of Registration to be employed shall be in or as nearly as ‘ may be in the Form of Schedule (A), No. 2, hereto annexed; and that ‘ Form of Warrant of Registration shall supersede and be used in place of ‘ the Form of such Warrant given in Schedule (A), No. 2, annexed to the ‘ said “ Titles to Land (Scotland) Act 1858.” And Warrants of Registra- ‘ tion may be signed either by an individual Agent, or by the Subscription ‘ of any Firm of which the Agent may be a partner. And the Form of ‘ Warrants of Registration hereby prescribed shall have the same legal ‘ Force and Effect as is conferred on the Forms of Warrants of Registration ‘ annexed to the said “ Titles to Land (Scotland) Act 1858,” with reference ‘ to the Conveyances for which such Warrants are prescribed by the said ‘ last-mentioned Act.’

It will be seen, by comparing the above clause with § 141 of the present Act, that it is by the latter that the Warrant of Registration will henceforth be regulated, as the reference to the Act of 1858 is no longer applicable. At the same time, it may be noticed that by § 163 of the present Act the repealed Acts, of which the Act of 1858 is one, are to remain in force so far as to give validity to any reference to them in any Statute not repealed.

Warrant of Registration indorsed or written thereon in or as nearly as may be in such one or other of the Forms of Warrants of Registration contained in the following Schedules hereto annexed, *viz.* Schedule (F), No. 2, and Schedule (H), Nos. 1, 2, and 3, as may be applicable to the particular Conveyance, Deed, or Writing so to be presented, which Warrant shall in every case specify the person or persons on whose behalf the Conveyance, Deed, or Writing is presented for Registration, and in the Case of Lands not held by Burgage tenure the Register or Registers of the County or Counties, and in the case of Lands held by Burgage Tenure the Register or Registers of the Burgh or Burghs in which the Lands to which such Conveyance or Deed or Writing has reference are situated, and shall be signed by such Person or Persons, or by his or their Agent or Agents, and in the latter Case the Warrant may be signed either by an Individual Agent or by the Subscription of any Firm of which such Agent may be a partner: Provided always that nothing herein contained shall render it necessary to have a Warrant of Registration indorsed or written upon any Conveyance, Deed, or Writing of or relating to lands held by Burgage tenure which according to the existing Law or Practice may be recorded in any Burgh Register without such Warrant."

It will be observed that under the Proviso at the end of this Section, it is not imperative to have a Warrant of Registration indorsed or Written upon any Writs applicable to Burgage subjects which, according to the existing Law and Practice, may be recorded in any Burgh Register without such Warrant. The Writs referred to are Instruments of Sasine and of Resignation and Sasine—Bonds and Dispositions in Security having a Clause consenting to Registration in the Burgh Register of Sasines—Notarial Instruments,—and the like. It will, however, be in all cases prudent to write a Warrant upon every Writ before presenting it for Registration even in a Burgh Register.

Under the Titles to Land Acts, both of 1858 and of 1860, it was decided, in the case of *Johnston v. Pettigrew*, 16 June 1865, 3 Macph. p. 954, that a Writ was ineptly recorded where, in the Warrant of Registration which had been signed by an Agent, the Agent had omitted to add to his signature his professional designation and the name of his Client; and considerable doubts were also enter-

tained as to whether such a Warrant was in proper legal form, if the Agent, instead of subscribing it as an Individual, subscribed the Social name of the firm of which he happened to be a partner.

The present Act, in order to obviate all challenge of Writs *recorded before its Commencement* under the prior Acts on the ground of non-compliance with the requirements of these Acts as to the mode of signing the Warrants, provides(*t*) that—

“ § 145. It shall not be competent to challenge the validity of any existing Warrants of Registration upon Conveyances under the Titles to Land (*Scotland*) Acts, of the 21st and 22d years of the reign of Her present Majesty, chapter 76, and the 23d and 24th years of the reign of Her present Majesty, chapter 143, hereby repealed, or the Real Rights completed in the Persons of those in whose favour the said Conveyances are recorded by the Registration thereof in the appropriate Register of Sasines, on the ground that the said Warrants of Registration are disconform to the Terms of the Schedules annexed to the said Acts, provided that the said Warrants contain the name of the Party or Parties on whose behalf the Warrant is written, and contain the Designation of such party or parties, or refer to the same as given in the Conveyance on which such Warrants are engrossed, and are signed by the Party or Parties themselves, or by his or their Agent or Agents, either individually or as a partnership ; and the Designation “ Agent ” or “ Agents,” without any further Designation, shall be valid and sufficient in the Case of all Warrants expedite in virtue of the said repealed Acts.”

With regard to *future* Warrants, the Act(*u*) provides that it shall be competent for the Agent to subscribe the Warrant either as an Individual or by the Social Name of his Firm. A similar provision is contained in the “ Land Registers Act 1868,” § 4.(*v*) It must be borne in mind that § 145 of the present Act has merely a retrospective effect in securing from challenge Warrants in which the Agent has omitted to add his designation. It is therefore indispensable that, in signing future Warrants of Registration, the Agent or Agents shall append to his

(*t*) The Act, § 145.

(*v*) *Vide supra*, p. 48, note (*s*).

(*u*) The Act, § 141, *vide supra*, p. 44.

or their subscription the appropriate professional designation as prescribed by the Schedule, *e.g.*—

“G. H. (or J. K. & L.), *W.S., Edinburgh, Agent (or Agents).*”

or

“G. H. (or J. K. & L.), *Writer (or Writers), Glasgow, Agent (or Agents).*”

or as the case may be. It is no longer necessary to append the Name of the Client.

Before leaving the subject of the Warrant of Registration, we may observe that by the Land Registers Act, § 12 (See *Appendix*, p. 137), where it is desired to Record for Preservation, or for Preservation and Execution, as well as for Publication, a Deed which may be competently registered in the Register of Sasines, the Deed, on being registered in that Register, shall be held to be also registered in the Books of Council and Session for Preservation, or for Preservation and Execution, Provided that when presented for Registration in the Register of Sasines, the Deed shall have in the Warrant for Registration

“an addition, specifying that the Writ is to be Registered for Preservation, or for Preservation and Execution, as well as for Publication, in or as nearly as may be in the form of Schedule (A), No. 3,”

annexed to the “Land Registers Act” (See *Appendix*, p. 143). The addition to meet such a case, which will fall to be made to the Forms of the Warrant given in the Schedules of the Titles Consolidation Act [(F), No. 2, *Appendix*, p. 93, and (H), Nos. 1, 2, and 3, *Appendix*, pp. 94, 95], can be easily introduced in all these forms by inserting in each of them, after the words

“Register on behalf of A. B. (*insert Designation*),”

the following words,

“for Preservation [*or Preservation and Execution*] as well as for Publication, in the Register,” &c.

The Deed, after being so registered in the Register of Sasines, for Preservation, &c., as well as for Publication, is not, as is now the case, to be given back to the Ingiver;

but is to be transmitted by the Keeper of the Register of Sasines to the Lord Clerk Register or his Deputies, and indexed along with other Deeds registered in the Books of Council and Session, or separately, as the Lord Clerk Register may direct. The Registration in the Register of Sasines is declared in such case to be equivalent to Registration in the Books of Council and Session; and an Extract

“containing as part of said extract, where the Writ is registered for execution, a Warrant for Execution,”

is to be delivered to the Ingiver by the Keeper of the Register of Sasines without abiding the actual Booking in that Register. A form of the Extract is given in Schedule (B) of the Land Registers Act (See *Appendix*, p. 144); but

“no Writ shall be held to be registered for the purpose of Execution which does not contain a Procuratory for Registration, or Clause of Consent to Registration, for the purpose of Execution in the Body of the Writ.”

After the Deed is Transmitted to the Lord Clerk Register, Extracts may be issued by the Deputy Keeper of the Records; and all Extracts, issued in terms of that Act, shall have upon them a certificate or marking indicating the *cumulo* amount of Stamp-duty paid on the principal Writ recorded and retained for Preservation.

5. *Infestment propriis manibus.*

The only other remark which we have to make on the 15th Section of the Act is, that it provides a short and simple method by which a Husband may give to his Wife Infestment *propriis manibus*, by recording a Conveyance granted in favour of himself with a Warrant of Registration in a special form (Schedule (H), No. 3) in favour of himself and of his Wife, to be signed by himself and not by an Agent.—(See *Appendix*, p. 95.)

Direction by Grantor to record a Part or Parts of a Conveyance.

In many cases the Grantor of a Conveyance may desire

either that the whole Deed shall not be recorded for Publication in the Register of Sasines, or that the Publication of certain Clauses and Conditions of his Grant shall not be omitted from his Disponee's Infestment. To meet such cases, the Acts of 1858 (*w*) and of 1860 (*x*) provided that the Grantor of a Conveyance might, by a clause of Direction in the Deed, specify the Part or Parts of the Conveyance which he desired to have recorded, and Schedules were appended to these Acts containing forms of such a Clause, and of the Warrant of Registration to be used in such cases. The present Act re-enacts these Provisions with an alteration in the form of the Warrant of Registration, the effect of which will be afterwards pointed out in our remarks upon Notarial Instruments and Assignations of unrecorded Conveyances. The provisions of the present Act are as follows:—

“ § 12. Immediately before the Testing Clause of any Conveyance of Lands, it shall be competent to insert a Clause of Direction, in or as nearly as may be in the Form No. 1 of Schedule (F) hereto annexed, specifying the Part or Parts of the Conveyance which the Grantor thereof desires to be recorded in the Register of Sasines; and when such Clause is so inserted in any Conveyance, whether dated before or after the Commencement of this Act, and with a Warrant of Registration thereon, in which Express Reference is made to such Clause of Direction (such Warrant being in the Form as nearly as may be of No. 2 of Schedule (F) hereto annexed), is presented to the Keeper of the appropriate Register of Sasines for Registration, such Keeper shall Record such Part or Parts only, together with the Clause of Direction and the Testing Clause and Warrant of Registration; and in the Absence of such express Reference in the Warrant of Registration as aforesaid, such Conveyance shall be engrossed in the Register as if it had contained no Clause of Direction; and the Recording of such Part or Parts of the Conveyance, together with the Clause of Direction and the Testing Clause, and the Warrant of Registration as before provided, shall have the same legal Effect as if, at the Date of such Recording, a Notarial Instrument containing such Part or Parts of the Conveyance had been duly expedited and recorded in the appropriate Register of Sasines in favour of the Person on whose behalf

(*w*) 21 and 22 Vict., c. 76, § 3.

(*x*) 23 and 24 Vict., c. 143 §§ 5, 25.

the Conveyance is presented : Provided that, notwithstanding such Clause of Direction, it shall be competent for the person entitled to present the Conveyance for Registration to record the whole Conveyance, or to expedite and record a Notarial Instrument thereon, as after provided, in the same Manner as if the Conveyance had contained no such Clause of Direction ; and where such Notarial Instrument shall be expedite no Part or Parts of the Conveyance directed to be recorded shall be omitted from such Instrument."

Although this section contemplates the case of the Clause of Direction requiring only a Part or Parts of the Deed to be recorded, there is no room to doubt that the Grantor may competently direct the whole Deed to be recorded. The effect of Recording a Conveyance containing a Clause of Direction, with Warrant of Registration thereon, being declared to be equivalent to the Recording of a Notarial Instrument upon the Conveyance, our remarks on this point will more appropriately be made when dealing with the Notarial Instrument. (*Vide infra*, p. 52.)

(3) *Infectment by Notarial Instrument in favour of Donee.*

1. *Notarial Instrument in favour of a Donee under an ordinary Conveyance.*

In certain cases in which it was not desirable to record the whole Deed, it was, under the Acts of 1858 and 1860,(y) declared to be competent to the Donee to obtain Infectment on the Conveyance by expediting and recording in the Register of Sasines a "*Notarial Instrument*," which consisted of a short statement by a Notary Public, setting forth that the Conveyance had been presented to him, by or on behalf of the Donee;—specifying the Names of the Grantor and Grantee, and the Date of the Deed;—reciting the Description of the Lands, or making a Reference thereto;—and stating that the Instrument was taken by the Donee in terms of the Statute. The Registration of this Instrument in the Register of Sasines had under these Acts the full operation

(y) 21 and 22 Vict., c. 76, §§ 1 and 2; and 23 and 24 Vict., c. 143, §§ 3 and 4.

and effect of a recorded Instrument of Sasine in the form previously in use.

The class of cases in which such an Instrument could competently be expedited by a Disponee (a) was, under the former Acts, very limited, being restricted to cases in which

“a Conveyance of Lands shall be contained in a Deed granted for further Purposes and Objects, such as a Marriage Contract, Deed of Trust, or Deed of Settlement,”

or in which the Deed conveyed

“separate Lands or separate Interests in the same Lands to the same or different Persons.”

But cases frequently occur in which the Conveyance, although not granted for “*further purposes and objects*,” contains a long Narrative or other Matter, the Publication of which in the Register of Sasines is wholly unnecessary either for the completion of the Real Right of the Disponee, or for the protection of the Public, and which under the old system of Conveyancing would not have been inserted in the Instrument of Sasine following on the Conveyance. In such cases, however, it was incompetent, under the Acts of 1858 or 1860, for a Disponee to use the Notarial Instrument, unless the Deed contained a “Clause of Direction;” and he could complete his Real Right only by recording the whole Conveyance in the Register of Sasines, or by having recourse to the Instrument of Sasine, if the Deed contained a Precept of Sasine. In the present Act (b) this inconvenience has been obviated by making it competent for the Original Disponee to use the Notarial Instrument *in any case in which it is not desired to record the whole Deed.* (c) The section provides that

“§ 17. Where it is not desired to record in the Register of

(a) An Assignee of the original Disponee was in a much better position than the Disponee himself under these Acts as he could in any case have expedited a Notarial Instrument in his own favour.

(b) The Act, § 17.

(c) Although the use of the Notarial Instrument is now made competent in *every* case, it should not be employed unless in cases in which there is some good reason for not recording the whole deed.

Sasines the whole of a Conveyance or Deed, or the whole of a Discharge, of or relating to Lands, it shall be competent and sufficient to expedite and record in the appropriate Register of Sasines a Notarial Instrument setting forth generally the Nature of the Conveyance or Deed or Discharge, and containing those Portions of the same by which the Lands are conveyed or discharged, and by which Real Burdens, Conditions, Provisions, or Limitations are imposed or Discharged ; and where by any Conveyance, or Deed, or Discharge, separate Lands or separate Interests in the same Lands are conveyed or discharged in favour of the same or different Persons, it shall not be necessary to record the whole of such Conveyance, or Deed, or Discharge, but it shall be competent and sufficient to expedite and record as aforesaid a Notarial Instrument, setting forth generally the Nature of the Conveyance or Deed or Discharge, and containing the Part or Parts of the Conveyance or Deed or Discharge, by which particular Lands are conveyed or discharged in favour of the Person or Persons in whose favour the Notarial Instrument is expedite, and the Part of the Conveyance or Deed or Discharge, which specifies the Nature and Extent of the Right and Interest of such Person or Persons, with the Real Burdens, Conditions, Provisions and Limitations, if any ; and such Notarial Instrument shall be in or as nearly as may be in the form of Schedule (J) hereto annexed ; and upon such Notarial Instrument or any similar Notarial Instrument expedite in virtue of any of the Acts of Parliament hereby repealed being so recorded, the Person or Persons in whose favour the same has been or shall be expedite and so recorded, shall be in the same Position as if, at the date of such recording, the Conveyance or Deed or Discharge on which it proceeds, along with a Warrant of Registration thereon, had been recorded in the appropriate Register of Sasines in favour of such Person or Persons."

As the Disponee, on expediting and recording such a Notarial Instrument, is here declared to be in the same position as if he had recorded the Deed with a Warrant of Registration, and as by § 15 the Registration of the Conveyance is declared to be equivalent to Infestment by a recorded Instrument of Sasine following on the Deed, it will be seen that the Disponee, on recording the Notarial Instrument, becomes Infest in the Lands conveyed.

Separate Notarial Instruments may be expedite on a Conveyance, if separate Lands are conveyed by the Deed, or if separate Interests in the same Lands are conveyed to different Persons.

If the Instrument proceeds upon a Deed containing a "Clause of Direction" (*supra*, p. 49), no part of the Deed directed to be recorded maybe omitted from the Instrument.

The Instrument *must* have a "*Warrant of Registration*"(e) indorsed or written upon it if it is to be recorded in the General Register of Sasines; and it is recommended that this course should be followed even where it is to be recorded in a Burgh Register.

The form of the Instrument(f) has been slightly altered from those given in the Acts of 1858 and 1860. The Lands, Real Burdens, &c., in place of being inserted at length, are to be either inserted or referred to, *as may have been done in the Conveyance*; and the Name of the Disponee in whose favour the Instrument is taken, is omitted from the Concluding Statement of the Notary—it being deemed unnecessary to repeat the Name which has been already stated at the Commencement of the Instrument. In this respect the Schedule differs only from that of the Act of 1858, and not from that of the Act of 1860.

The Schedule is not framed to meet the case of an Instrument following upon a Discharge, although the 17th section of the Statute contemplates the use of the Instrument in such cases; but there will be no difficulty in adapting the Form to suit such a case. The Registration of a Notarial Instrument following a Discharge will have the same effect as if the Discharge itself had been recorded.

2. *Notarial Instrument in favour of a General Disponee inter vivos.*

The form of this Instrument is given in Schedule (L), and the Enactments regarding it are contained in § 19 of the Act; but as the General Disposition *inter vivos* is not of frequent occurrence, except in the case of Trust-Deeds for behoof of Creditors, we shall defer our remarks on the subject until we come to treat of "*Settlements of Heritage Mortis Causa, or by Testament.*"(g)

(e) *Vide supra*, p. 48.

(f) The Act, Schedule (J). See *Appendix*, p. 96.

(g) *Vide infra*, p. 68.

4. *Infestment by Resignation ad Remanentiam.*

The only other mode in which the Act provides for the completion of the Real Right of an Original Disponee or Grantee, under an Ordinary Conveyance, is by Resignation *ad Remanentiam*.

The Act, although it renders Instruments of Resignation *ad remanentiam* unnecessary, still provides, in § 18,

“that nothing herein contained shall prevent an Instrument of Resignation *ad remanentiam* being expedite and recorded on a Conveyance granted prior to the 1st day of October 1858, and containing a Clause of Resignation in the form authorised by the Act of the 10th and 11th Vict., c. 48; and that all Instruments of Resignation *ad remanentiam* may be in or as nearly as may be in the Form of Schedule (K),^(h) hereto annexed; and when in such Form, whether expedite before or after the Commencement of this Act, the same may, with Warrant of Registration thereon, be recorded in the appropriate Register of Sasines at any time during the Life of the Party in whose favour the Resignation is made, and the Date of Presentment and Entry set forth on any Instrument of Resignation in such Form by the Keeper of the Register shall be the Date of the Resignation and of the Instrument.”

The same section, however, re-enacts the 4th section of the Titles to Land Act of 1858, and dispenses with the Instrument *ad Remanentiam* altogether, substituting therefor the Registration of the Procuratory, or of the Conveyance containing the Clause of Resignation *ad Remanentiam* in favour of the Superior, with Warrant of Registration thereon, or a Notarial Instrument in the form of Schedule (J).⁽ⁱ⁾

III.—COMPLETION OF THE TITLE OF ASSIGNEE OF UNRECORDED CONVEYANCE.

(1) *By Recording Assignment.*

We have hitherto been dealing with cases in which the person requiring Infestment is an Original Disponee under a Conveyance. It frequently happens, however, that the

(h) The Act, Schedule (K). See *Appendix*, p. 96.

(i) See *Appendix*, p. 96.

Original Disponee does not expedite Infestment, but transmits to another his Personal Right under the Conveyance.

Under the Law and Practice, existing prior to the Titles Acts of 1858 and 1860, the Deed by which such Transmission was effected was termed a Disposition and Assignation, which was a long Document containing a full narrative of the Original Disposition, with a Conveyance thereof and of the Lands to the Assignee, and a Special Assignation to him of the unexecuted Procuratory of Resignation and Precept of Sasine. An Instrument of Sasine narrating both deeds, and duly recorded, was required to complete the Real Right of the Assignee if he desired immediate Infestment without going to the Superior.

The Titles to Land Acts 1858 and 1860, however, following out the system introduced by the Heritable Securities Act of 1845,^(l) substituted for this long process a short and simple method of Assignation,^(m) to be written either on the unrecorded or unfeudalised Conveyance, or on a Separate Paper, a Notarial Instrument being in certain cases required or allowed in addition to the Assignation.

The provisions of these three Statutes on this matter are by the present Act consolidated and re-enacted⁽ⁿ⁾ with some alterations and additions. As the Section is an important one, we give it here at length:—

“ § 22. It shall be competent to any Person having Right to an Unrecorded Deed or Conveyance, whether granted in favour of himself or originally granted in favour of another Person, to Assign the Deed or Conveyance, in or as nearly as may be in the Form No. 1 of Schedule (M) to this Act annexed, setting forth the Deed or Conveyance, and the Title or series of Titles, if any, by which he acquired Right to the same, and the Nature of the Right assigned; and the Assignation, or in the event of there being more than one, the successive Assignations, may be recorded in the appropriate Register of Sasines along with the Deed or Conveyance itself, and a Warrant of Registration thereon, in or as nearly as may be in the Form No. 2 of Schedule (H) hereto annexed; and it shall be competent to write the Assignation or Assignations

(l) 8 and 9 Vict. c. 81, § 5.

(m) 21 and 22 Vict. c. 76, § 18; and 23 and 24 Vict. c. 143, § 9.

(n) The Act, § 22. See *Appendix*, p. 16.

on the the Deed or Conveyance itself, in or as nearly as may be in the form No. 2 of Schedule (M) hereto annexed, setting forth the Deed or Conveyance and the Title or Series of Titles, if any, by which such Person acquired Right to the same, and the Nature of the Right assigned; in which case the Assignment or Assignations and the Deed or Conveyance may be so recorded along with the Warrant of Registration thereon, which Warrant shall be in or as nearly as may be in the Form No. 1 of Schedule (H) hereto annexed; and the Deed or Conveyance, with the Warrant of Registration, and the Assignment or Assignations, separate from the Deed or Conveyance, and those written upon the Deed or Conveyance, if any, and all similar Assignations granted before the commencement of this Act, being so recorded, shall operate in favour of the Assignee on whose behalf they are presented for Registration, as fully and effectually as if the Lands contained in the Assignment, or, if there be more than one, in the last Assignment, had been disposed by the original Deed or Conveyance in favour of such Assignee, and the Deed or Conveyance, with the Warrant of Registration, had been recorded, in the manner hereinbefore provided, of the Date of recording such Deed or Conveyance and Assignment or Assignations; and all Deeds or Conveyances with a Warrant of Registration and Assignment or Assignations written thereon, that may have been so recorded before the Commencement of this Act, shall operate in favour of the Assignees on whose behalf the same shall have been so recorded, as effectually as is hereinbefore provided in regard to a recorded Deed or Conveyance with a Warrant of Registration and Assignment or Assignations written thereon, notwithstanding that such Assignment or Assignations may not have been docketed with reference to such Warrant, or referred to therein as being so docketed."

The present Act, it will be seen, does not leave the Forms of Assignations to be regulated entirely by the Schedules—as was done in the former Statutes—but it expressly enacts what the Assignment shall contain. In particular, it enacts that the Assignment shall, whether it is separate from or written upon the Original Deed, set forth that Deed, and the Title or series of Titles (if any) by which the person in Right of the Conveyance acquired his Right, and the Nature of the Right assigned. The Schedule also—(M) No. 1—which gives the form of an Assignment separate from the Conveyance,(o) is ac-

(o) The Act, Schedule (M.) No. 1. See *Appendix*, p. 98.

accompanied by a Note, which directs such Assignations to be docqueted (in a form contained in the Note) with reference to the Warrant of Registration written on the Conveyance itself. (p) This direction supplies an omission in the former Statutes, (q) in which, although the Warrant of Registration, as given in the Schedules and referred to in the enacting clauses of these Statutes, plainly contemplated the use of such a Docquet, no Form was given, and the use of the Docquet was not enacted. (r)

The Section with which we are dealing (§ 22) further declares that an Assignment in one or other of the forms of the Schedule, (s) when recorded along with the Conveyance,—with Warrant of Registration thereon, (t)—is to have the same operation as if the original Conveyance had been granted and recorded in favour of the Assignee himself; in other words, it is to have the effect of Infektment in the Lands conveyed in favour of the Assignee as from the date of recording the Assignment and Conveyance.

(p) The Warrant of Registration, Schedule (H), No. 1, refers to the Assignment as docqueted with reference to the Warrant.

(q) 21 and 22 Vict. c. 76, § 13; and 23 and 24 Vict. c. 143, § 9, and relative Schedules.

(r) It is, we think, clear that under these Statutes the use of the Docquet was not essential, and that Assignations recorded without being docqueted are not challengeable on that ground. In order, apparently, to remove doubts which had been entertained in some quarters as to this—a declaration has been inserted at the close of § 22 of the present Act, that Assignations, so recorded, are effectually recorded although not docqueted. By some oversight, however, that Declaration, instead of being made applicable to Assignations *separate from* the Conveyance, has been made to apply solely to Assignations *written upon* the Conveyance, which require no Docquet. The validity therefore of the Registration of *separate undocqueted* Assignations, under the former Statutes, must still depend upon the interpretation to be put upon these Statutes. Although, as we have said, we think their validity is unquestionable, it would be well to remove all doubt by a Clause to be inserted in some future Act of Parliament.

(s) The Act, Schedule (M), No. 1 and No. 2. See *Appendix*, p. 98.

(t) The Warrant of Registration, when the Assignment is written upon the Conveyance, is in the Form of Schedule (H), No. 1; when the Assignment is separate from the Conveyance, the Warrant is in the Form of Schedule (H), No. 2; but the Warrant is to be written upon the Conveyance, not upon the Assignment.

2. *By Recording a Notarial Instrument in favour of the Assignee or other Person in right of an Unrecorded Conveyance.*

(A) *Notarial Instrument to be recorded along with the Conveyance.*

Where a party has Right to an Unrecorded Conveyance by General Disposition, Service, Decree of Adjudication, or any other Title, or where, being an Assignee, he does not desire to record, under § 22, the whole of the Assignment or Assignations by which he has acquired his Right, his Title may (*u*) be completed by means of a Notarial Instrument (*v*) in favour of the Assignee, setting forth the Deed or Conveyance, and the Title or Series of Titles by which he acquired his Right thereto, and the Nature of his right. On recording the Instrument along with the Deed or Conveyance, with a Warrant of Registration thereon in form of Schedule (H), No. 2, the person in whose favour the Registration is made will be infeft in the Lands conveyed. This Notarial Instrument, however, before being presented for Registration, must be docqueted, with reference to the Warrant of Registration on the Conveyance in the form printed in the Note to Schedule (N).(*w*)

(B) *Notarial Instrument when Conveyance is not to be recorded.*

Many cases may occur in which the party in Right of a Conveyance may desire to avoid recording at length not only the Assignment, &c., but also the Conveyance itself. In such a case he may expedite a Notarial Instrument in

(*u*) The Act, § 23.

(*v*) The Act, Schedule (N). See *Appendix*, p. 99.

(*w*) Although such a docquet may have been contemplated by the former Statutes (21 and 22 *Vict.* c. 76, § 14, and 23 and 24 *Vict.* c. 143, § 10, and *relative Schedules*) there seems no room for questioning the validity of the Registration of undocqueted *Notarial Instruments* under these Statutes, even if the doubts above referred to—*supra*, Note (*r*) p. 56—in reference to undocqueted Assignations were to be held to be well-founded, because these

the form of Schedule (J),(x) which is to set forth generally the nature of the Deed or Conveyance, those portions of the Deed by which the Lands in regard to which the Instrument is expedite are conveyed, and by which Real Burdens, &c., if any, are imposed, and the Title or Series of Titles by which the Assignee acquired Right to the Conveyance; and on recording the Instrument, with a Warrant of Registration thereon (which will be in the form of Schedule (H), No. 1), in the appropriate Register of Sasines, he will be in the same position as if the original Conveyance had, as at the date of recording the Instrument, been itself duly recorded in his favour; in other words, he will be Infeft in the lands conveyed, in so far as these are embraced within the Instrument.(y)

IV.—COMPLETION OF TITLE OF TRUSTEE IN A SEQUESTRATION, OR OF LIQUIDATORS OF JOINT STOCK COMPANY, OR OF JUDICIAL FACTORS, OR OF CONGREGATIONS AND RELIGIOUS BODIES.

(1) *Completion of Title of Trustee or Liquidators.*

The present Act(z) merely re-enacts the provisions of the Acts of 1858 and 1860,(a) by which a Trustee in a Sequestration, and Liquidators of a Joint Stock Company,

Statutes, in directing the Registration of such Notarial Instruments, did not refer to the particular form of the Warrant of Registration which contained a reference to a Docquet as had been done in the case of Assignations. The omission of the Docquet in the case of Notarial Instruments was thus not a failure to comply with the requirements of the Statutes; and whatever may be the state of the case as to the Undocqueted Assignations, no Clause of indemnity seems to be necessary as regards Notarial Instruments recorded under these Statutes without being docqueted. In future, however, the Docquet *must be appended*, both to these Notarial Instruments and to Assignations, before being presented for Registration.

(z) See *Appendix*, p. 96. This is the form already referred to (p. 50), which is to be employed by an *Original Disponent* who desires not to record the whole Conveyance.

(2) The Act, § 25.

(y) The Act, § 23.

(a) 21 and 22 Vict. c. 76, § 22; and 23 and 24 Vict. c. 163, § 15.

were authorised to complete Titles to the Lands held by the Bankrupt or the Company by a Notarial Instrument, which is declared equivalent to a Conveyance of the Lands from the Bankrupt or the Company, and is authorised to be recorded in the Register of Sasines, to the effect of Infesting the Trustee or Liquidators. The Schedule of the present Act giving the form of the Notarial Instrument, so far as relating to Irredeemable Rights, is Schedule (O).^(b)

(2) *Completion of Title of Judicial Factor, &c.*

Before the passing of the Acts 1858 and 1860, a Judicial Factor upon a Trust-Estate could not make up Titles to the Estate under his management without a lengthened, cumbrous, and expensive procedure, consisting generally of an application by himself to the Court for Special Powers to make up Titles; an Extract Act and Warrant granting such Authority; and an Action of Declaratory Adjudication, or of Constitution and Adjudication in Implement. The Acts referred to simplified the procedure to some extent by providing^(c) that where the Petition for Special Powers *specified* the Lands, the Warrant following on the Petition should also specify the same, and should have the effect of a Disposition of the Lands from the Party whose Estate was under management to the Factor; thus enabling the Factor to record the Warrant in the Register of Sasines as a Conveyance, to the effect of infesting him in the Lands, without the necessity of farther judicial procedure. And the "Trusts (*Scotland*) Act 1867" still farther simplified the procedure by providing^(d) that Special Powers to make up Titles might be applied for in the Original Petition for the Appointment of the Factor, and that the Warrant to be granted in pursuance thereof should operate as a Conveyance of the Lands described in the Petition to the Factor in the manner provided by the Act of 1860.

From the terms, however, in which the Provisions of

(b) See *Appendix*, p. 99.

(c) 21 and 22 Vict. c. 76, § 21; and 23 and 24 Vict. c. 148, § 38.

(d) 30 and 31 Vict. c. 97, § 15.

all these Acts were expressed, it was thought that it was not competent in such Petitions to describe the Lands to which Titles were to be made up by Reference to the Description, as set forth at full length in some prior Recorded Deed or Instrument; and it was therefore considered necessary to insert the Description at full length, thus adding greatly to the expense of printing the Petition, and of extracting and recording the Act and Warrant.

The present Act remedies this defect, by providing (e) that, where authority from the Court of Session to complete Titles to Lands forming the whole or part of the estate to be managed by a Judicial Factor (f) has been or shall be asked, either in the Original Petition for the Appointment of the Factor, or in any Petition or Note to the Court by the Factor for such authority, and where the Lands to which such Title is to be completed are specified and described, or referred to as in *Schedule (E)* or *Schedule (G)*, the Warrant (g) to be granted for completing the Title shall also specify and describe the Lands, or so refer to the Description thereof; and

“such Warrant shall be held to be a Conveyance in due and common Form of the Lands therein specified in favour of such Judicial Factor granted by the Person, whether in Life or Deceased, whose Estate is under Judicial Management, or granted, where such Judicial Factor has been or shall be appointed on a Trust Estate which shall have been vested in a Trustee or former Judicial Factor, by such Trustee or former Factor, whether in Life or Deceased, for the Purposes of such Trust, to be holden, in the Case of Lands not held by Burgage Tenure, in the Manner and to the Effect, and subject to the Provisions enacted and provided in the Sixth Section of this Act in the case of Conveyances in which no Manner of Holding is expressed, and in the case of Lands held by Burgage Tenure to be holden of Her Majesty in free Burgage.”

(e) The Act, § 24.

(f) By the Interpretation Clause, “Judicial Factor” includes “Judicial Factors, Curators *bonis* to persons under incapacity, Factors *loco Tutoris*, Factors *loco Absentis*, and all Judicial Managers.”

(g) The Interpretation Clause also includes such Warrants and the Petitions on which they proceed under the general head of “*Deed*” or “*Conveyance*.”

It is also provided by the same section that such Warrant may, with Warrant of Registration thereon, be recorded in the Register of Sasines as a Conveyance in favour of the Factor, such Registration being declared equivalent to Infektment.

Provision is also made for intimation being made by the Court to enable parties interested to object to the procedure, and a Declaration is added extending the provisions and enactments of the Statute to all Petitions to and Warrants by the Court under the "*Trusts (Scotland) Act 1867*" (including of course Petitions by and Warrants to Beneficiaries under Lapsed Trusts under § 14 of that Statute), unless in so far as such Provisions and Enactments may be inapplicable to the Form and Objects of such Petitions or Warrants.

(3) *Completion of Title of Congregations, Religious Bodies, &c.*

The Act 13 Vict. c. 13, § 1, and the Act 23 and 24 Vict. c. 143, § 32, provided for the Titles of Land held by Congregations and similar bodies for Churches, Schools, and the like, being taken to the Moderator, Minister, Managers, &c., and thereafter vesting in their successors in office, without necessity of making up titles in the persons of such successors. The present Act (*h*) consolidates these enactments, and the section is referred to as printed in the Appendix, p. 19. No alteration is made upon the former provisions, except that as the Word "*Lands*" in the present Act is by the Interpretation Clause declared to Extend to Heritable Securities, and to the Sums of Money thereby secured, it was unnecessary to express that in the present section.

V.—*SETTLEMENTS OF HERITAGE MORTIS CAUSA.*

We have hitherto been dealing with Transmissions of Lands *inter vivos*, and we now come to deal with Transmission from the Dead to the Living, which may be

(*h*) The Act, § 26.

effected either by a Settlement by the owner of the Lands *Mortis causa*, or by Service by the Heir where the Owner dies Intestate. Services of Heirs are dealt with below, under a Separate Title. (See p. 70, *et seq.*)

One of the most common Forms of Settlement is the "General Disposition and Settlement,"⁽ⁱ⁾ and we shall, in the first place, show how the Grantee under such a Settlement is to complete his Title under the Act.

1. *Completion of Title by General Disponee.*

A General Disponee is a party who has a right to Lands under a Conveyance which, from the absence of a proper description of the Lands, or from the want of the proper Feudal Clauses, does not of itself constitute a sufficient warrant to the holder to obtain Infestment in the Lands conveyed, either by recording the Deed in the Register of Sasines, or by expeding and recording an Instrument of Sasine upon the Deed. It is true that where the Grantor of the General Disposition had himself only a Personal Right to the Lands conveyed by it,—*i.e.*, where he held them under an unrecorded Conveyance, or under Titles with open Procuratories of Resignation, or Precepts of Sasine,—the General Disponee could expedite Infestment in the Lands in virtue thereof by using his General Disposition as a Midcouple, in the same way as an heir holding a Retour or Decree of General Service could have done. But where the Grantor was himself infeft in the Lands, and where the General Disposition did not contain a Precept of Sasine, the General Disponee could not under the Law, as it stood prior to 1858 and 1860, make up his title without the voluntary intervention of the Grantor's heir,—except by means of an Action of Constitution against the heir to have him ordained to make up Titles to the Lands as heir, and convey them to the General Disponee in Implement of the obligation contained or implied in the General Disposition,—which action required to be followed by an Action of Adjudication in Implement of that obligation. The

(i) *Vide supra*, p. 52.

Decree of Adjudication, again, required to be followed by Infestment confirmed by the Superior under the Lands Transference Act of 1847, or by a Charter of Adjudication from the Superior followed by Infestment.

The Acts of 1858 and 1860 greatly simplified the mode of completing the Title of a General Donee, by substituting for the whole of the procedure above described a Notarial Instrument, to be recorded in the Register of Sasines, and confirmed where necessary by the Superior.

The present Act re-enacts the clauses of these former Statutes,^(k) and at the same time removes all doubt as to what is really meant by the term "General Donee." This is effected by giving a very ample description of the various Deeds which are to fall under the category of a General Disposition. The former Statutes referred to the Deed merely as a

"General Conveyance of Lands, whether by Deed *mortis causa* or *inter vivos*,"

but the present Act refers to it as a General Disposition by the Grantor

"of his Lands, whether by Conveyance *mortis causa*, or *inter vivos*, or by a Testamentary Deed or Writing within the sense and meaning of the 20th and 21st sections of this Act,^(l) and whether such General Disposition shall extend to the whole Lands belonging to the Grantor, or be limited to particular Lands belonging to him, with or without full description of such Lands, and whether such General Disposition shall contain or shall not contain a Procuratory or Clause of Resignation, or a Precept of Sasine, or an Obligation to Infest, or a Clause expressing the Manner of Holding."

The section then provides that it shall be competent to the Grantee (*m*) under such General Disposition to expedite

(k) The Act, § 19. See 21 and 22 Vict., c. 76, § 12; 23 and 24 Vict., c. 143, § 8.

(l) *Vide infra*, p. 66.

(m) By the former Statutes this provision was made to apply to the Donee under the General Conveyance, 'or to any other party who shall have 'acquired right to such Conveyance in whole or in part by Service,' &c. The wide terms of the Interpretation Clause of the present Act have rendered it unnecessary expressly to extend the operation of the Section to parties other than the original Donee, the words 'Donee' and 'Gran-

and record in the Appropriate Register of Sasines a Notarial Instrument in the form of Schedule (L),(n) the effect of which is to place the Grantee

“in all respects in the same position as if a Conveyance of the Lands contained in such Notarial Instrument had been executed in his favour by the Grantor of the General Disposition, to be holden, in the case of Lands not held by Burgage Tenure, by such Manner of Holding, if any, as is expressed in the General Disposition, and if no particular Manner of Holding is therein expressed, then to be holden in the Manner and to the Effect, and subject to the Provisions enacted and provided in the Sixth Section of this Act in the Case of Conveyances in which no Manner of Holding is expressed, and in the Case of Lands held by Burgage Tenure to be holden of Her Majesty in free Burgage, and as if such Conveyance had been followed, where such Lands are not held by Burgage Tenure, by an Instrument of Sasine of the said Lands in favour of such Grantee, or, where they are held by Burgage tenure, by an Instrument of Resignation and Sasine thereof in his favour expedite and recorded in the appropriate Register of Sasines, at the date of recording such Notarial Instrument: Provided always that where such Notarial Instrument shall be expedite by a Person other than the Original Grantee under such General Disposition, it shall set forth the Title or Series of Titles by which the Person in whose favour it is expedite acquired Right to such General Disposition, and the Nature of his Right.”

It is to be observed that the Instrument in the form of Schedule (L) sets forth the Recorded Deed—whether Conveyance, Sasine, or Instrument—by which the Grantor of the General Disposition was himself “*Infeft*” in the Lands. The word “*Infeft*” is here used in place of the word “*Vest*” which was used in the Schedules of the former Acts—thus removing a doubt which was entertained as to whether it was necessary to present to the Notary the Conveyance or Warrant for Sasine on which

‘tee’ being declared to extend to and include ‘the Heirs, Successors, and ‘Representatives’ of the Disponee or Grantee; and the word ‘Successors’ being declared to extend to and include ‘Heirs, Disponees, Assignees, legal as well as voluntary Executors and Representatives.’ And the proviso at the end of this Section (§ 19) makes it clear that the word ‘Grantee’ does here include Heirs and Successors.

(n) See *Appendix*, p. 97.

the Sasine or Notarial Instrument in favour of the Grantor had proceeded. The production of the Conveyance or Warrant is unnecessary where the Grantor has been infeft by an Instrument of any kind separate from such Conveyance or Warrant.

The General Disponee, on expeding and recording the Notarial Instrument, will thus become infeft in the Lands conveyed by the General Disposition, and, if the Lands be not held by Burgage Tenure, he will be in a position to demand an Entry from the Superior by Confirmation.

It may here be noticed, that the effect of a General Disposition, as evacuating a Special Destination under which Particular Lands were held by the Grantor, has recently been the subject of Discussion in the Court of Session, and it has been decided by a majority of the Whole Court (9 to 4) that the Special Destination is evacuated, unless the General Disposition contains a clear indication of intention that it is not to have this effect—*Thoms v Thoms*, 30th March 1868, 6 Macph. p. 704. Several of the Judges referred to the provisions of the Titles to Land Act of 1858, which we have been considering as recognising the principles on which the judgment proceeded. We venture, with great deference, to express an opinion that the views of the Minority of the Court are more in accordance both with principle and authority, but we trust that the question will ere long be finally settled in the Court of last Resort.

2. Mortis Causa and Testamentary Conveyances of Lands.

We have already (o) explained generally the beneficial provisions of the Act, by which it has been made lawful for an Owner of Lands to settle the succession thereto after his Death, not only by the existing form of a Deed containing words of *de præsenti* Conveyance, but also by Testament. The Section of the Act (p) containing these provisions, being an entirely new enactment, and effecting

(o) *Vide supra*, p. 10.

(p) The Act, § 20.

most important changes on the Law and Practice as to such matters, we give it here at full length.

“ § 20. From and after the Commencement of this Act it shall be competent to any Owner of Lands to settle the Succession to the same in the event of his Death, not only by Conveyances *de præsenti* according to the existing Law and Practice, but likewise by Testamentary or *Mortis causa* Deeds or Writings, and no Testamentary or *Mortis causa* Deed or Writing purporting to convey or bequeath Lands which shall have been granted by any Person alive at the Commencement of this Act, or which shall be granted by any Person after the Commencement of this Act, shall be held to be invalid as a Settlement of the Lands to which such Deed or Writing applies, on the ground that the Grantor has not used, with reference to such Lands, the Word “Dispone,” or other Word or Words importing a Conveyance *de præsenti*; and where such Deed or Writing shall not be expressed in the Terms required by the existing Law or Practice for the Conveyance of Lands, but shall contain with reference to such Lands any Word or Words which would, if used in a Will or Testament with reference to Moveables, be sufficient to confer upon the Executor of the Grantor, or upon the Grantee or Legatee of such Moveables, a Right to claim and receive the same, such Deed or Writing, if duly executed in the Manner required or permitted in the Case of any Testamentary Writing by the Law of *Scotland*, shall be deemed and taken to be equivalent to a General Disposition of such Lands within the meaning of the nineteenth section hereof by the Grantor of such Deed or Writing in favour of the Grantee thereof, or of the Legatee of such Lands, and shall be held to create and shall create in favour of such Grantee or Legatee an obligation upon the Successors of the Grantor of such Deed or Writing to make up Titles in their own Persons to such Lands and to convey the same to such Grantee or Legatee; and it shall be competent to such Grantee or Legatee to complete his Title to such Lands in the same Manner and to the same Effect as if such Deed or Writing had been such a General Disposition of such Lands in favour of such Grantee or Legatee, and that either by Notarial Instrument or in any other Manner competent to a General Disponee: Provided always that nothing herein contained shall be held to confer any Right to such Lands on the Successors of any such Grantee or Legatee who shall predecease the Grantor, unless the Deed or Writing shall be so expressed as to give them such Right in the event of the Predecease of such Grantee or Legatee.”

As the words of the Section appear to be very explicit, and to be so expressed as to effect the object aimed at, viz., the assimilation of the Law of Settlement of Heritage to that of Settlement of Moveables, and to free the former from the technicalities which have hitherto incumbered it, we shall make only one or two observations on the Section in addition to our previous remarks.(g)

1. While the existing form of Settlement by *de præsenti* Conveyance is still to be retained, the Section distinctly enacts that it shall likewise be competent for the owner of Lands to settle the succession thereto, in the event of his Death, "by Testamentary or *Mortis Causa* Deeds or Writings." This provision effects a great change on the Law, which has hitherto forbidden the owner of Land to settle the Succession to the same by Testament or otherwise than by a *de præsenti* Conveyance.

2. In order to give effect to a Settlement of Lands which, although framed generally in the form hitherto in use, may be defective, owing to the omission of the Technical words of *de præsenti* Conveyance required in such settlements, the Section provides that such omission, and particularly the omission of the word "DISPONE," shall not have the effect of rendering any "Testamentary or *Mortis Causa* Deed or Writing, *purporting to convey or bequeath Lands*," invalid as a settlement of such Lands.

3. This provision is made to apply to all such Settlements executed after the Commencement of the Act, as well as to Settlements already executed by persons alive at that date, but not taking effect till after that date.

4. The Section then explains what is to be the effect of a Settlement of Heritage by a Testament or Informal Deed. It is not to be equivalent to a Direct Conveyance of the Lands to the Grantee, entitling him to expedite Infestment therein by recording the Deed as a Conveyance in the Register of Sasines. Such a proceeding might introduce into a progress of Titles elements of uncertainty which, in the case of Settlements of Land-Rights it is at all times

(g) *Vide supra*, p. 10, *et seq.*

desirable to avoid, and accordingly it is provided that where the Settlement is not so expressed as to be a complete Conveyance of the Lands in *de præsenti* form,—but is so expressed as to contain, with reference to Lands, Words which would, if used in a Will or Testament with reference to Moveables, be sufficient to confer upon the Executor of the Grantor, or upon the Grantee or Legatee of such Moveables, a Right to claim and receive the Same, the Settlement if duly executed *in the manner required or permitted in the case of any Testamentary Writing by the Law of Scotland* shall be deemed and taken to be equivalent to a General Disposition of such Lands within the meaning of the 19th Section of the Act.

Thus a Settlement of Lands may now be in terms such as the following :—

“ I leave and bequeath my Lands of A., or my whole Lands, or my whole Estate, heritable and moveable, to C. D.”

or it will be enough to say,

“ I appoint C. D. to be my sole Executor as to my Lands of A.,” &c.

In short any Testamentary Writing which is expressed in such Terms and executed in such a manner as would operate an effectual Settlement or Bequest of Moveables, if these were the subject of the Deed, will, if Lands be the subject dealt with, have the same effect as to Lands also.

5. Such a Settlement being declared to be equivalent to a General Disposition of Lands in the sense of the 19th Section of the Act, which we have already fully explained (*supra*, p. 63), the Section goes on further to describe its operation and effect. These are—

(1) That the settlement is to create an obligation on the Successors^(r) of the Grantor of the Deed to make up Titles in their own persons to the Lands, and convey them to the Grantee or Legatee.

(2) That the Grantee or Legatee may enforce that obligation in any way competent to an ordinary General Dis-

(r) As to the persons who fall under this category, *vide supra*, p. 63, note (m), and also the Interpretation Clause of the Act, *Appendix*, p. 2.

ponee,—*e.g.* by Constitution and Adjudication in Implement; and

(3) That the Grantee or Legatee may complete his Title by the shorter and simpler method provided by the 19th Section, viz., by Notarial Instrument.^(s)

6. Settlements under this Section do not require the formalities of Execution hitherto required in Settlements of Heritage. It will henceforth be enough if they are executed with only such formalities as are permitted or required by the Law of Scotland in the case of Testaments. For example, Notarial Execution by one Notary and two witnesses, or by a Clergyman acting as Notary and two witnesses will suffice, and a Settlement executed abroad will be validly executed if it be executed in such a manner as would render it a valid Settlement of Moveables if it related to Moveables alone.^(t) Where there are doubts as to the execution, the Title should be completed by Constitution and Adjudication in Implement.

7. The only other observation which occurs to us as called for by this Section is, that it provides expressly that the Settlement is not to confer any Right on the Successors of a Grantee or Legatee who shall predecease the Grantor unless it be so expressed as to give such Right to the Successors in the event of the predecease of the Grantee or Legatee. This proviso was necessary because, without it, the words "Grantee" and "Legatee" would, under the Interpretation Clause, have extended to and included Successors of such Grantee or Legatee.

8. As it was not impossible that the permission to settle Heritage by Testament might lead to the notion that a Bequest of Lands renders the same *Moveable* as to *Succession*, which certainly was not intended, a provision has been introduced into the Act (§ 21) to the effect that where such a Settlement is in favour of the Grantee, not wholly

(s) *Vide supra*, p. 64.

(t) As to authentication and execution of Testaments, see Bell's Lectures on Conveyancing, i, pp. 78 and 85; and ii, p. 903-4. See also as to Wills Executed Abroad, Stat. 24 and 25 Vict. c. 114, and c. 121.

for his own behoof, but wholly or partly as Trustee and Executor for behoof of others, the Lands are to be, in the first instance, applied for the purpose specified in the Settlement; and where such purposes cannot, in whole or in part, be carried into effect, *e.g.*, from Lapse of Legacies where no Residuary Legatee is named, or where no purposes with reference to such Lands are specified, the Trustee or Executor is to convey such lands, or so much thereof, or of their proceeds if sold, as may not be required for the Purposes of the Settlement, not to the parties who would have been entitled to a Conveyance of the Estate or balance thereof had it consisted solely of Moveables, but

“to or for behoof of the Person or the Successors of the Person who, but for the passing of this Act, and the granting of such Deed or Writing, would have been entitled to succeed to such Lands on the death of such Grantor.”

Such person will in the general case be the heir-at-law of the Grantor; or the heir under the Special Destination of the Particular Lands.

(II.) SERVICES OF HEIRS.

Under the old Law and Practice, Services of Heirs proceeded on Brieves from Chancery, directed, in the case of General Service, to any Judge Ordinary; and, in the case of Special Service, to the Sheriff of the County in which the Lands embraced within the Service were situated. Where the deceased died domiciled abroad, or where the Lands (in the case of Special Service) were situated in more counties than one, or where the Sheriff was incapacitated by relationship to the party, the Brieve was directed to the Macers of the Court of Session, until 1821, in which year it was, by the Act 1 and 2 George IV, c. 38, provided that the Brieve should be directed to the Sheriff of Edinburgh. The Heir, after publication for fifteen days, prosecuted his Claim of Service before the party to whom the Brieve was directed, and before a Jury of Fifteen Persons, generally

selected by himself, who returned a Verdict which was transmitted or "Retoured" to Chancery, and was there recorded or extracted. It is unnecessary to enter farther into the particulars of the procedure under this old Law, because it was abolished in 1847 by the Service of Heirs Act,(v) which, although repealed, has been substantially re-enacted by the present Act. In our remarks on the portion of the Act applicable to this subject, we shall, where necessary, explain its provisions by a reference to and contrast with the corresponding procedure prior to 1847; and we shall also point out the particulars in which it differs from the Act of 1847.

The portion of the present Act which deals with Services of Heirs is contained in §§ 27 to 58, both inclusive. These Sections occur very much in the same order, and, with some important alterations and additions, are expressed in the same language as those of the Act of 1847; and we shall now endeavour briefly to explain them.

1. *Petition of Service Substituted for Brieve from Chancery.*

The Act of 1847 abolished the Brieve from Chancery; and the present Act,(x) while repealing the Act of 1847, re-enacts the Abolition of the Brieve, and declares that it shall not be competent for any person to obtain himself served Heir, except according to the provisions of the present Act, and that

"every Person desirous of being served Heir to a Person deceased, whether in General or in Special, and in whatsoever Character, and whether the Lands which belonged to such Person deceased were held by Burgage Tenure or were not held by Burgage Tenure, shall present a Petition of Service to the Sheriff in manner hereinafter set forth."

It will be observed that it is made competent to apply for Service under this Act to "*the Sheriff*," whether the Lands belonging to the Ancestor were held by Burgage Tenure or not by Burgage Tenure. Prior to the Titles to Land Act of 1860,(y) it was not competent for the Heir of a

(v) 10 and 11 Vict. c. 47.

(y) 23 and 24 Vict. c. 143, § 7.

(x) The Act, § 27.

party infeft in Lands held Burgage to make up a Title by Special Service; and the provisions of that Act making such a proceeding competent have been re-enacted in the present Act by the section now under consideration, and by § 46.

2. *Jurisdiction of Sheriff of Chancery and Sheriff of a County.*

The Petition of Service is to be directed to "*the Sheriff*," which words are declared by the Interpretation Clause to

"extend to and include the Sheriff and Steward of any County or Stewartry and his Substitute, and the Sheriff of Chancery and his Substitute;"

and the words "Sheriff of Chancery" are also to extend to and include

"the Sheriff of Chancery and his Substitute under this Act, or under the Act of the 10th and 11th *Victoria*, chap. 47."

This enactment extends and enlarges § 29 of the Act of 1847, which, as has been already mentioned,^(z) created the "Sheriff of Chancery," and not only gave to him the Jurisdiction which had formerly been exercised by the Judge Ordinary, the Macers of the Court of Session, and by the Sheriff of Edinburgh under the Act of 1821, but gave him Jurisdiction in all Services where the party might choose to resort to his Court. The Act of 1847 also regulated the Jurisdiction of the Sheriffs of Counties in the matter of Services.

The functions of all these Judges are farther and fully defined by § 28 of the present Act.^(a)

(z) *Vide supra*, p. 4.

(a) *See also on this point* § 50 of the Act, which provides that the Sheriff of Chancery is to hold his Courts in any place which the Lords of Session may assign to him; and § 51, which provides that the Court of Session may regulate by Act of Sederunt the Times at which he is to hold his Courts; as to which there is at present no regulation.

(1) *Jurisdiction in General Services.*

Where a General Service only is intended to be carried through, the Petition is to be presented—

To the *Sheriff of the County* within which the Deceased had at the time of his death his Ordinary or Principal Domicile.

Or, in the option of the Petitioner, to the *Sheriff of Chancery*.

And in every case in which the Deceased had at the time of his death no Domicile in Scotland, to the *Sheriff of Chancery*. (b)

(2) *Jurisdiction in Special Services.*

In every case in which a Special Service is sought, the Petition is to be presented—

To the *Sheriff* within whose jurisdiction the Lands—or the Burgh containing the Lands—in which the deceased died last vest and seized are situated.

Or, in the option of the Petitioner, to the *Sheriff of Chancery*.

And where the Lands are situated in more Counties than one, or in more Burghs than one, if such Burghs are in different Counties, then in every such case to the *Sheriff of Chancery*.

3. *Nature and Form of Petition.*

The Petition is, by § 32, declared to be (after Publication in the manner explained below) equivalent to a Brieve of Service duly executed, and a Claim duly presented to the Inquest according to the Law and practice existing prior to 1847. The Forms of the Petition are regulated by § 29 of the Act, which re-enacts the Fourth Section of

(b) The Act, § 34, provides that where the Domicile of the deceased is unknown or is doubtful, the Petition is to be dealt with as if the deceased had died domiciled furth of Scotland—*i.e.*, it must be presented to the *Sheriff of Chancery*.

the Act of 1847 and relative Schedules, with some alterations and amplifications.

All Petitions for Service are to be subscribed by the Petitioner himself, or by a Mandatory specially authorised for the purpose. No Form of Mandate is given in the Act, but Examples will be found in the *Juridical Styles*, vol. i, pp. 282, 283, and 284, 4th ed. The Mandate may also be and frequently is embodied in a Disposition of Lands, or in a Discharge or other Deed, the Grantor of which requires to be served Heir to an Ancestor in order to render his Disposition or other Deed valid and effectual to the Grantee. In such cases the Disponee, or a party named for the purpose in the Deed, will be the Mandatory. An example of such a Mandate will be found in the *Juridical Styles*, vol. i, p. 104, 4th ed.

(1) *Form of Petition of General Service.*

The Form of the Petition of General Service is given in Schedule (P), (c) which, although fuller than the form given in the Act of 1847, is in all essential respects identical with that Form.

The Act, § 29, enacts that the Petition shall,

“under the exceptions after mentioned,”

set forth the particulars which, prior to 1847, were in use to be set forth in the Claim presented to the Jury under the Brieve of Inquest, and

“shall pray the Sheriff to serve the Petitioner accordingly.”

The particulars, which under the old practice were in use to be set forth in the Claim for General Service, were—

1. That the Ancestor died at the Faith and Peace of the Sovereign; which was presumed.
2. That the Claimant was his nearest and Lawful Heir; and
3. That the Claimant was of lawful age.

The present Act (§ 29) provides that it shall not be

(c) See *Appendix*, p. 100.

necessary in the Petition of General Service to set forth the first or third of these particulars—viz., that the Ancestor died at the Faith and Peace of the Sovereign, or that the Petitioner is of lawful age; but it expressly enacts that the Death of the Ancestor shall be set forth, and the date at or about which it took place, and the County or place in which the deceased had at the time of his death his

“ Ordinary or principal Domicile.”

This last requirement is, however, modified by § 34, which provides that if the deceased died upwards of *ten* years(*d*) prior to the date of presenting the Petition for General Service as Heir to him, it shall not be necessary for the Petitioner

“ to state or prove the County within which the deceased had his ordinary or principal Domicile at the Time of his Death; or that such Domicile was furth of Scotland; but in such cases it shall be sufficient (so far as regards the Domicile of the deceased) for the Heir to state in his Petition, and, if required in the Court of Service, to make Oath, that he is unable to prove at what place the deceased had his Ordinary or Principal Domicile at the Time of his Death.”(*e*)

The Petition must in every case set forth the Relationship of the Heir to the Ancestor to whom he is seeking to be served, and the Character in which he claims, and if he claims to be served as Heir of Provision, or as Heir of Tailzie and Provision, he must(*f*) distinctly specify the Deed or Deeds under which he so claims. The Schedule (*P*) shows how this requirement is to be carried into effect; and it will be observed, from the terms of the Schedule, that it is not necessary to insert the Destination or Conditions of Tailzie at full length, provided they are referred to in the manner therein pointed out, which is substantially the same kind of Reference as is provided for by § 9, and

(*d*) By the Act 21 and 22 Vict., c. 76, § 80, the death of the Ancestor must have taken place *forty* years before the date of the Petition to entitle the Heir to avail himself of this form of Petition.

(*e*) In such a case the Petition, as was pointed out *supra*, p. 73, note (*b*), *must* be presented to the Sheriff of Chancery.

(*f*) The Act, § 29.

exemplified in Schedule (C). As Petitions of Service are included in the Interpretation Clause as "Deeds and Conveyances" in so far as the subject or context is not repugnant to such construction, they are, when presented by a party claiming to be served as Heir of Entail, clearly Deeds or Conveyances of or relating to Lands held under a Deed of Entail, in which it is lawful to substitute such a Reference for full insertion of the Conditions of Entail.

(2) *General Service with Specification annexed.*

As a Service involved an universal Representation of the Ancestor by the Heir serving, he was allowed, by the Act 1695, c. 24, to give up on oath, within the *Annus Deliberandi*, an Inventory of the Heritable Estate of his Ancestor; and on being afterwards served, the Inventory was referred to in his Service, and his liability was limited to the amount of the Inventory. An Heir so served was said to be served "*Cum beneficio Inventarii*." The Service of Heirs Act of 1847, § 25, introduced a new though analogous form of limiting the liability of an Heir who served himself Heir in General to his Ancestor.^(g) And this provision has been re-enacted by § 49 of the present Act, which allows a Person petitioning for General Service to state in his petition, in the form given in No. 1 of Schedule (R), that he desires the Effect of his Service to be limited to certain lands belonging to his Ancestor, and embraced in a particular Specification thereof annexed to his Petition in the form of No. 2 of said Schedule (R), which Specification is to be subscribed by the Petitioner or his Mandatory; the effect of which, in limiting the liability of the Petitioner, will be explained when we come to deal with the effect of the Decree of Service, *infra*, p. 94.

(3) *Form of Petition of Special Service.*

The Form of the Petition of Special Service is given in

(g) The liability incurred by an Heir expeding a *Special Service* is now limited to the Lands embraced in his Service. *Vide infra*, p. 79.

Schedule (Q),^(h) which, although fuller than the form given in the Service of Heirs Act of 1847, is in all essential respects identical with that form.

The present Act (§ 29) enacts that the Petition shall (as in the case of a General Service),

“ under the exceptions after mentioned,”

set forth the Particulars which, prior to 1847, were in use to be set forth in the Claim presented to the Jury under a Brieve of Inquest, and shall pray the Sheriff to serve the Petitioner accordingly. The Particulars which under the old Practice were in use to be set forth in the Claim for Special Service were:—

1. That the Deceased died at the Faith and Peace of the Sovereign (which was presumed).
2. That he died Infeft.
3. That the Claimant was the next and lawful Heir.
4. Of whom the Lands were held.
5. By what Tenure they were held.
6. What was the “ *Extent* ” of the Lands, *Old* and *New*.
7. That the Claimant was of lawful age ; and
8. In whose hands the Fee had been since the Death of the Ancestor.

The present Act (§ 29) provides that it shall not be necessary in the petition for Special Service to set forth the Value of the Lands, according either to New or Old Extent, or the Valued Rent thereof, or of whom the Lands are held, or by what Service or Tenure they are held, or in whose hands the same have been since the Death of the Ancestor, or whether, or how long the same have been in Non-entry, or that the Petitioner is of lawful age, or that the Ancestor died at the Faith and Peace of the Sovereign.

The Act thus dispenses with all of the above particulars, except the 2d and 3d. As to these it requires that the Date as well as the Fact of the Ancestor's death shall

^(h) See *Appendix*, p. 101.

be set forth, and that where the Petitioner claims to be served as Heir of Provision, or of Tailzie and Provision in Special, the Deed or Deeds under which he so claims shall be distinctly specified. The Schedule (Q) shows how this latter requirement is to be carried into effect; and, as in this respect it is identical with the corresponding part of the Petition of General Service, we refer to our remarks on that subject, *supra*, pp. 75, 76.

It will also be observed that in the Petition for Special Service the Infestment of the Ancestor still requires to be set forth; and that in setting forth his death, an error in punctuation which occurred in the Schedule of the Act of 1847 has been corrected. In the Schedule of that Act the Petition for Special Service commenced as follows:

“That the late C.D. [*here name and design the ancestor*] died on
or about the day of last, vest and seized
in,” &c.

The comma ought to have preceded the word “last” instead of following it; and although a little consideration shows that the word “last” was truly intended to apply to the words “vest and seized,” and not to the Date of Death, instances were numerous in which Petitions for Special Service were found to be erroneously framed in consequence of a too literal adherence to the Schedule. In these cases the parties had filled up the blanks in the Schedule thus:

“That the late C.D. died on or about the *tenth* day of *December*
last, vest and seized,” &c.

omitting altogether to state the *year of the death*. The possibility of similar error is excluded in the present Act, not only by the insertion of the comma in its proper place in the Schedule—immediately before the word “last”—but also by the direction contained in the Schedule to set forth at full length the Day of the Month and Year of the Ancestor’s Death. It will also be seen that the Description of the Lands, the Conditions of Entail, and Real Burdens affecting the lands, may be either inserted at full length or referred to in the manner set forth in Schedules (E) (G) (C) or (D).

In the case of Special Service—as of General Service—it is essential that the Relationship of the Party served to his Ancestor should be set forth, as well as the Character in which the Service is sought.

(4) *Form of Petition of Special Service and General Service Combined.*

Under the old law a Special Service implied also a General Service to the deceased in the same character; and this had the effect of subjecting the Heir served in a General Passive Representation of his Ancestor, with liability for all his Ancestor's Debts. The Act of 1847⁽ⁱ⁾ provided, and the present Act has re-enacted,^(j) that no Special Service after 1847 shall imply a General Service to the deceased in the same character, *except as to the particular Lands embraced in the Service*, and that the Special Service shall infer only a Limited Passive Representation of the deceased; and the Person thereby served as Heir shall be liable, in respect of such Service, for the Deceased's Debts and Deeds only to the Extent or Value of the Land embraced by such Special Service and no further.

Where, however, the Heir petitioning for Special Service in any Character shall desire to be also served Heir in General *in that Character*, he may^(k) combine with his prayer for Special Service a prayer for General Service in the same Character. The form in which this is to be introduced into the Petition for Special Service is also given in Schedule (Q). That is an extension of the provision of § 24 of the Act of 1847, which conferred this privilege only upon persons petitioning for Special Service as Heir of Line or Heir Male.

4. *Procedure in Petition.*

(1) *Caveat Against Petition.*

A party interested in preventing the contemplated Service of another person may lodge with the Sheriff-Clerk a

(i) 10 and 11 Vict. c. 47, § 23.

(j) The Act, § 47.

(k) The Act, § 48.

Caveat against any Petition by such person ; (l) and the Sheriff-Clerk is bound to receive the Caveat, and on receipt of the Petition, or of any Official Notice of such Petition, he shall within twenty-four hours

“ write and put into the Post Office a Notice of such Petition addressed either to the Agent by whom, or to the person on whose behalf the Caveat is entered, *as may be desired in such Caveat, and according to the name and address which shall be stated in such Caveat.*” (m)

(2) *Publication of Petition.*

No Petition is to proceed without Publication, the particulars as to which were originally enacted by the 7th section of the Act of 1847, and are substantially re-enacted in the present Act, (n) without material variation, except that the words,

“ when such Domicile was within Scotland,”

have been inserted in that part of the Section which provides that the Service shall not proceed until the Sheriff-Clerk of Chancery shall have received Official Notice that Publication has been made in the County of the Domicile of the party deceased. The Section is referred to for its own terms, which do not call for special comment.

§ 32 provides not only that the Petition is to have the effect of a Brieve and Claim of Service, but that every such Petition, on being published in the manner directed by the Statute, or that may be directed by Act of Sederunt, shall be held duly published to all parties interested, and a Decree to follow upon such Petition shall not be questionable or reducible upon the ground of omission or inaccuracy in the observance by any Officer or Official Person of any of the Forms or Proceedings prescribed in the Statute or in such Act of Sederunt.

(l) For a list of the parties who fall under the general term “ the Sheriff-Clerk,” reference is made to the Interpretation Clauses of the Act, *Appendix*, p. 2.

(m) The Act, § 31.

(n) The Act, § 30.

(3) *Evidence.*

After the Petition has been presented and published, the Statute directs (o) an interval of time—varying from Fifteen to Thirty days—to elapse between the Publication of the Petition and any further procedure. Where the deceased died in *Scotland*, the interval is to be Fifteen days from the date of the latest Publication, or Twenty days if the Publication has been made in Orkney or Shetland or if the Petition has been presented to the Sheriff of Orkney or Shetland; and where the Deceased died abroad, and the Petition is presented to the Sheriff of Chancery, the interval is to be Thirty days from the date of Publication.

After the lapse of these respective intervals, Evidence may be taken. This may be done either by the Sheriff himself to whom the petition is presented, or by the Provost, or any of the Bailies of any City or Royal or Parliamentary Burgh, or *by any Justice of the Peace (p) for any part of the United Kingdom, WHEREVER such Justice of the Peace may happen to be for the time, whether within the United Kingdom or abroad, or by any Notary Public*, all of whom are authorised by the Statute to act as Commissioners of such Sheriff without Special Appointment, or by any Commissioner whom the Sheriff may himself appoint.

The Evidence is to be

“all competent Evidence, Documentary and Parole;”

(o) The Act, § 83.

(p) Under the corresponding section of the Service of Heirs Act of 1847 the only persons who could act as *Statutory Commissioners* were the Provost and Bailies of any City or Royal or Parliamentary Burgh. This was found to be practically very inconvenient; and the present Act extends the statutory appointment to Justices of the Peace and Notaries Public. Under the Interpretation Clause of the Statute, “Notary Public” means “a Notary Public duly admitted to practise in Scotland.” Of course it was always competent, as it still is, to the Sheriff to nominate any person whom he may select to be a Special Commissioner to take the Evidence.

and the Parole Evidence is to be taken down in Writing, according to the practice in the Sheriff Courts of Scotland prior to 1st November 1853—*i.e.*, at full length, by the Sheriff-Clerk or the Commissioner's Clerk, and signed by the Witnesses, Sheriff or Commissioner, and Clerk.(g) A full and complete Inventory of the Documents produced is also to be made out and certified by the Sheriff or his Commissioner.

(4) *Decree of Service.*

The Evidence being thus completed, the Sheriff,

“without the aid of a Jury,”

(which, as has been mentioned, was an essential part of the Tribunal in Services under the old Law and Practice), is to pronounce Decree, serving the Petitioner in terms of the Petition, in whole or in part, or refusing to serve the Petitioner, and dismissing the Petition in whole or in part as shall be just; and the Decree is to be in all respects equivalent to the Verdict of the Jury under the old Brieve of Inquest.

(5) *Competing Petitions.*

Under the Act 1847 it was provided (§ 16) that no person should be entitled to appear to oppose a Service before the Sheriff who could not competently have appeared to oppose such a Service had it proceeded under the old Brieve of Inquest; and that all Objections should be presented in Writing, and should forthwith be disposed of in a Summary Manner by the Sheriff, with power to him, however, to hear parties *viva voce* thereon, if he should see cause. This provision is re-enacted by § 40 of the present Act. As it was held under the old Law that no person could appear to oppose a Service without himself taking out a Brieve of Service in his own favour, the practice

(g) The object of this part of the enactment is that a full Record of the Evidence may be preserved, in case at any future time a Reduction of the Service should be brought by any party claiming to be the true Heir.

under the Act of 1847 has been not to allow any party to oppose a Service, unless he has himself presented a Petition of Service. This was regulated by § 11 of that Act, and is re-enacted by § 35 of the present Act, with this difference, that whereas, in order to entitle a party effectually to compete with another who has already presented a Petition, it has been hitherto generally held to be necessary that the Competing Petition should be presented and published *before the Sheriff had taken Evidence* in the First Petition, the present Act provides that

“it shall be lawful to the Sheriff, if he shall see cause at any time *before pronouncing Decree in the First Petition*, to sist Procedure on the first Petition in the meantime, or to conjoin the said Petitions, and thereafter to proceed to receive Evidence in manner before directed, allowing each of the parties not only a Proof in chief with reference to his own Claim, but a Conjoint Probation with reference to the Claims of such other parties; and the Sheriff shall, after receiving the Evidence, pronounce Decree on the said Petitions, Serving or Refusing to Serve as may be just.”

(6) *Expenses.*

Under the Act of 1847, although it was contemplated that the Sheriff might deal with the matter of Expenses, difficulty was felt as to how the Expenses awarded by the *Sheriff of Chancery* were to be taxed and his Decree therefor enforced. This is now provided for by § 35 of the present Act, which, after giving the Sheriff power at the same time as pronouncing his Decree in the Competing Petitions to dispose of the matter of Expenses, directs that

“when the Accounts thereof shall be audited and taxed in manner after provided, such Sheriff shall decern for the same;”

and by § 51, which after conferring general power upon the Court of Session to pass Acts of Sederunt for regulating the proceedings relating to Services under the Act,

and the Fees to be paid in respect of any of these proceedings, enacts that

“ the charges to be made by Agents and Solicitors, whether in the Inferior Court or Court of Session, for any proceedings under this Act shall be audited and taxed in the same manner as charges for other Judicial proceedings in the said Courts respectively are audited and taxed ; provided always that accounts of Expenses in the Sheriff Court of Chancery shall be audited and taxed *by the Auditor of the Court of Session*, and the Decree for such Expenses shall be extractable by the Extractor of the Court of Session in the same manner as a Decree of that Court, and all such Decrees shall be held to be Interim Decrees, and the Warrants shall, after Extract, be retransmitted to the Sheriff-Clerk of Chancery.”

*5. Recording and Extracting Judgment—Separate
Extracts in certain cases.*

As soon as a Decree in favour of the Petitioner is pronounced by the Sheriff, the Sheriff-Clerk is directed (by § 36) to transmit the whole proceedings to the Office of the Director of Chancery, by whom the Decree of Service is to be recorded and extracted. The Extract, when the Decree has been pronounced by the Sheriff of Chancery, is to be delivered by the Director of Chancery or his Depute to the Petitioner or his Agent ; and when the Decree has been pronounced by the Sheriff of a County, the Director of Chancery or his Depute is to transmit the Extract without delay to the Sheriff-Clerk of the County, to be by him delivered to the Petitioner or his Agent.

This section, to which reference is made for its terms at length, is a re-enactment of § 12 of the Act of 1847, with this important addition, that in cases where an Heir is served in Special to an Ancestor in several Separate Lands or Estates under the same Petition, it shall be competent for the Heir to obtain Separate Extract Decrees under the Petition applicable to one or more of such Parcels of Land or separate Estates, provided a Prayer to that effect is inserted in the Petition for Service. It will be seen that Schedule (Q) contains the Form of the Prayer for this purpose.

§ 38 provides for the method of Recording Decrees of Service in certain Books in Chancery, to be entitled "The Record of Services," an Index or Abridgment of which is to be printed and published annually and distributed in the manner to be directed by the Lord Clerk Register, or sold to the Public.

The "Director of Chancery" is also empowered by the same section to direct and regulate the Sheriff-Clerk with regard to the manner of arranging and transmitting Petitions of Service and procedure thereon, and also to perform various matters of detail, for which reference is made to the section itself, which is a re-enactment of § 14 of the Act of 1847. The remuneration of the Officials of Chancery is provided for by § 39, which re-enacts § 15 of the Act of 1847.

6. *Appeal to Court of Session and Review of Sheriff's Judgment.*

(1) *Appeal for Jury Trial.*

Where Competing Petitions have been presented, or conjoined, or where any person has competently appeared to oppose any Petition of Service, any of the Parties may, at any time (*r*) before Proof is begun to be taken by the Sheriff or his Commissioner, remove the Proceedings to the Court of Session, with a view to Jury Trial, by a Note of Appeal in or as nearly as may be in the form of a Note of Appeal, under the "*Court of Session Act 1868*." This Note of Appeal is the substitute for the Process of Advocation for Jury Trial which was made competent under the Act of 1847, and it is to be proceeded with in the same manner as Notes of Appeal presented with a view to Jury Trial against Judgments of the Sheriff Courts of Scotland. After the Proceedings have been thus removed to the Court of Session, it is not imperative to send the Case to a Jury—

(*r*) The Act § 41, re-enacting § 17 of the Act of 1847.

but it may be decided by the Court with or without Proof—and if Proof is allowed, the same may be either by way of Jury Trial or in any way which the Court may direct. In every case in which the Jury shall find a Verdict, or in which the Court shall pronounce a Judgment, in favour of a Party petitioning to be served, the Court shall at the same time, when applying such Verdict or pronouncing such Judgment, remit to the Sheriff from whom the Cause was appealed, with instructions to pronounce a Decree serving the Petitioner, which Decree may be recorded and extracted in the manner already provided.

(2) *Appeal from Judgment of Sheriff.*

Where the Sheriff has pronounced a Decree Refusing to Serve a Petitioner, or Dismissing his Petition, or Repelling the Objection of an opposing party, the Decree may (s) be brought under Review of the Court of Session, by a Note of Appeal without Caution, and in or as nearly as may be in the form of a Note of Appeal under the "*Court of Session Act 1868.*" This is a re-enactment of the 18th section of the Act of 1847, adapted to the alteration upon the Practice as to Review of Inferior Court proceedings generally, made by the Court of Session Act of 1868, and it provides that the Note is to be presented within Fifteen days, or where the proceedings have been taken in the Courts of Orkney and Shetland within Twenty days from the date of the Sheriff's Judgment, and that

"where the Decree has been pronounced after Opposition duly entered, or in Competition, *such Note shall be intimated to the Opposite Party*, and such Note shall be proceeded with in like manner with Notes of Appeal against Final Judgments of the Sheriff Courts."

The Court of Session is also empowered to allow further or additional evidence to be taken in any way in which evidence may competently be taken in ordinary Civil Causes in that Court, or to appoint the Cause or Special

(s) The Act § 42.

Issues therein to be tried by a Jury ; and if the Sheriff has Refused to Serve a party, but the Court of Session shall determine that such party ought to be Served, a Remit is to be made to the Sheriff, with instructions to pronounce a Decree Serving that party in terms of the Act, which Decree may be recorded and extracted as above provided.

A Proviso, however, is added, to the effect that where a Petition for Service has been refused, *without any opposing or competing party having appeared and been heard on the merits of the Petition*, the Petitioner may present a new Petition at any time thereafter ; and Right is reserved to either party, in any of the proceedings authorised in the Court of the Sheriff, either by the present Act or by the Act of 1847, to challenge by Reduction or in any competent form any Decree which may have been pronounced therein.

(3) *Reduction of Sheriff's Judgment.*

It may happen that a party, either from not having timeously appeared before the Sheriff, or from any other cause, may not be in a position to Appeal from the Judgment of the Sheriff to the Court of Session. In such a case his remedy is by Reduction of that judgment. This is regulated by § 43 of the Act, which re-enacts § 19 of the Act of 1847. In this Action of Reduction, the Court may allow additional Evidence, in the same way as in the case of an Appeal ; and it is provided that wherever the Decree of the Sheriff brought under Reduction has proceeded on competing Petitions, conjoined as aforesaid, and the Court shall determine that a different Person shall be served from the Person preferred by the Sheriff, a Remit is to be made to the Sheriff, with instructions to pronounce a Decree serving such different Person, which Decree may be recorded and extracted as aforesaid ; and it is declared,

“ that in any case of Reduction of a Service, the Judgment [*i.e.*, the Judgment of the Court of Session] shall, unless and until reversed by the House of Lords on Appeal, be conclusive as between the Parties to the Suit, against the party whose

Service is reduced, and shall have the same effect as if the Action had contained a Conclusion of Declarator that the party served was not entitled to be served in the Character claimed, and Judgment had been pronounced in terms of that Conclusion."

(4) *All Proceedings in Court of Session to be conducted as in Ordinary Court Actions.*

All proceedings (t) with reference to Appeals from the Sheriff, or to the Reduction of Decrees of Service, are to commence and be carried on in the same manner as proceedings of the same description in ordinary Civil Causes, and the whole provisions of the "Court of Session Act 1868," are by § 45 to apply as far as possible to Notes of Appeal, and Processes of Reduction under this Act. All Judgments to be pronounced by the Court of Session in such proceedings are to be equally final and conclusive as Judgments pronounced by the said Court in ordinary Civil Causes, and shall not be liable to Review by Reduction or otherwise, save and except to such extent and effect as Judgments by the said Court in ordinary Civil Causes are liable to Review. It is, however, made competent to Appeal against the said Judgments to the House of Lords in like manner as against Judgments of the Court in ordinary Civil Causes.

(5) *Provisions for Review to apply to Judgments of Sheriff under Act of 1847—and to depending Advocations and Reductions.*

This Section (§ 45), as well as §§ 41, 42, 43, and 44, are all made applicable to Proceedings not only under the present Act but, in as far as possible, to Advocations and Reductions of Decrees of Service pronounced under the Act of 1847. The section being new, we here quote it at length:—

"§ 45. The whole Provisions of 'The Court of Session Act 1868' shall, in so far as possible, apply to Notes of Appeal and Processes of Reduction under this Act, and to all Advocations from the

(t) The Act, § 44.

Sheriff, and to all Processes of Reduction of Decrees of Service in dependence in the Court of Session at the Commencement of this Act, and to all Advocations which may, after the commencement of this Act come before the Inner-House of the Court of Session by Report or Reclaiming Note from any Lord Ordinary; provided always that the Advocations depending before the Outer-House of said Court at the Commencement of this Act shall be disposed of in the Outer-House according to the Law and Practice existing prior to the Commencement of the said 'Court of Session Act 1868.'

i.e., prior to 15th October 1868.

(6) *Finality of Judgment of Lord Ordinary and Inner-House in certain cases.*

It ought however to be noticed, with reference to the subject of Review, that in § 161 there is a General Provision which somewhat modifies the foregoing section. Under that provision any judgment pronounced by the Lord Ordinary, in virtue of this Act, shall be subject to Review by a Reclaiming Note in Ordinary Form; and the Judgment of either Division of the Court upon such Reclaiming-Note, or upon *Advocation or Appeal*, shall be subject to Review by Appeal to the House of Lords or in any other competent mode or form; but the Judgments of the Lord Ordinary and of the Court respectively, if not so brought under Review,

"and whether the same shall have been pronounced in absence of THE RESPONDENT or not, shall be Final, and not subject to Review in any Mode or Form whatever."

The effect of this provision is, that where an Appeal from a Judgment of the Sheriff has been brought *after being duly intimated*, the judgment of the Court thereon, if not appealed to the House of Lords, shall be final and conclusive against the "*The Respondent*," and not subject to Review in any form, even although the Respondent did not appear; and the like effect is given to the absence of the Respondent in Advocations still in dependence before the Lord Ordinary, and in Reclaiming Notes and Advocations now or hereafter depending in the Inner-House.

The use of the word "*Respondent*" limits this effect of the non-appearance of a party to the cases of Advocation, Appeal, and Reclaiming Note, as the words, "*The Defender*" would have been required to extend its effect to *Defenders* in actions of Reduction.(v)

7. *Effect of the Decree of Service when Extracted.*

(1) *Decree of Service, whether General or Special.*

Every Decree of Service, whether General or Special, when recorded and Extracted in the manner already provided, is, by § 37, to have the full legal effect of a Service duly Retoured to Chancery, and is to be equivalent to a Retour of Service under the old form of Service under a Brieve. The Extract Decree is to have the full legal Effect of the Certified Extract of a Retour, according to the old practice, and the Decree of Service so recorded and extracted is not to be liable to challenge or to be set aside, except by a Process of Reduction, in the manner already pointed out. We have already (pp. 76-79) explained the effect of Decrees of Service as inferring *Representation* of the Ancestor by the Heir served.

(2) *Effect of Decree of Special Service.*

Under the Law at present in force, a Retour of Special Service, or a Decree of Special Service, confers upon the Heir served no effectual Right to the Lands embraced within the Service, unless and until he is Infest therein. We have already stated generally the Alteration which the present Act(x) has made upon the Law in this respect; but as the Section which effects this alteration* is

(v) See the *Interpretation Clause* of the 'Court of Session Act 1868,' where the word 'Defender' is made to include 'Respondent,' but 'Respondent' is not made to include 'Defender.' No practical inconvenience can result from thus limiting the right of Review, as all Appeals and Advocations must be intimated to the opposite party, and the Court and Lord Ordinary will of course take care that Decree in Absence in such cases is not pronounced until they are satisfied that such Intimation has been made. This matter seems to be one which should be forthwith regulated by Act of Sederunt.

(x) *Vide supra*, p. 12, and the Act, § 46.

an extremely important one, we shall give at length the precise words of those parts of it which are new. This section incorporates §§ 21 and 22 of the Service of Heirs Act of 1847, but it differs from § 21 at the outset by omitting the preliminary words—

“ for the purpose of completing the Feudal Title of the Heir so served, but of such Heir only.”

It then provides that every Decree of Special Service, on being recorded and extracted, if it has been pronounced under the Act of 1847 in favour of any person in life at the passing of the present Act, and every such Decree to be pronounced in virtue of the present Act, shall to all intents and purposes, unless and until reduced, operate as a Disposition in ordinary Form of the Lands contained in the Service granted by the Ancestor, provided he were last vest and seized in the Lands, to and in favour of the Heir so served, and to his other Heirs and Successors entitled to succeed under the Destination of the Lands contained in the Deceased's Investiture thereof, but under the whole Qualifications of the Investiture as set forth or referred to in the Decree. This implied Disposition is to be equivalent to a Disposition of the Lands containing the various Clauses of a Disposition, as set forth in Schedule (B), Nos. 1 and 2; even although the deceased should have died in Nonage, or been of Insane Mind, or under Disability, and as if it had been granted in these terms by the Deceased when of Full Age and Capacity to grant it; to be holden—where the lands are not held by Burgage Tenure—in the manner and subject to the provisions enacted and provided in the 6th Section of the Act in the case of Conveyances in which no Manner of Holding is expressed, and—where the lands are held by Burgage Tenure—then of Her Majesty in free Burgage.

Then follows a new enactment:—

“ And in either case such Extracted Decree shall be held from

the date of such recording^(y) to vest in the Heir so served a Personal Right to the Lands therein contained, and to render said Lands liable to all his Debts and Deeds, and to the Diligence of his Creditors, as well after his Death as during his Life, which Right shall be transmissible to the Heirs and Successors of the Heir so served entitled to succeed to the said Lands under the Destination thereof as aforesaid, and also to his Assignees, Legal as well as Voluntary, except in so far as such Transmission shall be effectually prohibited by the Titles under which said Lands are held."

The exception here made is intended to prevent this section from being held to do away with the Fetters or Conditions of Entail when the Lands are held under a Deed of Entail.

The effect of the Extracted Decree of Special Service, as vesting a Personal and Transmissible Right in the Heir served, having been thus declared, the Act goes on to provide for the manner of completing a Feudal Title in favour of him or of his Successors. The Heir himself is enabled to complete his Feudal Title by using the Extracted Decree in the same manner, and to the same effect, as if it were actually a Disposition of the Nature above mentioned, and in particular by recording it in the Appropriate Register of Sasines with a Warrant of Registration thereon on his behalf as a Conveyance under this Act. Such Registration in the Register of Sasines is to have the full legal effect of Infestment, and where the lands are not held by Burgage Tenure the Holding is to be Base of the Deceased and his Heirs until Confirmation thereof shall be granted by the Superior,

"as if such Investiture had been created by a Disposition from the deceased as aforesaid, recorded with Warrant of Registration thereon as aforesaid in the Appropriate Register of Sasines in favour of such heir at the Date of so recording the said Extracted Decree of Service."

Where the Heir so served has not been infest on his Service, and where his Personal Right has passed to his Successors, whether Heirs or Assignees, Legal or Volun-

(y) That is, recording in the "*Record of Services*" in Chancery, and *not* in the *Register of Sasines*.

tary, these Successors may complete their Feudal Title by using

“such Extracted Decree, as if the same had been an Unrecorded(z) Conveyance of the said lands in favour of the Heir so served, to which they had acquired Right, and to complete their Titles to said Lands in the manner and to the effect provided by this Act in the case of a party having right to an Unrecorded Conveyance.”(a)

Two Qualifications are appended to the Section,—one to the effect that, notwithstanding any Prohibition against Subinfeudation or Alternative Holding in the Investiture, the Titles so completed shall form a Valid Feudal Investiture in favour of the Heir so served, or of his Heirs, Successors, or Assignees, as the case may be, without prejudice to the Right of the Superior, to require him or them to enter forthwith as accords of law, and to deal otherwise with them as vassals unentered. This *Proviso* is rendered necessary by the Declaration in the former part of the Section, declaring that the Lands are to be held Base of the deceased and his Heirs, until Confirmation by the Superior.

The other *Proviso* is to the effect that nothing in the Act contained shall be held to repeal or alter the Act 1661, “*Concerning Appeareand Heirs, their payment of their Predecessors’ and their own Debts*,” or the Act 1695, c. 24, entitled “*Act for obviating frauds of Appeareand Heirs*,” by the former of which Acts the Creditors of the Defunct doing Diligence against the Apparent Heir and the Real Estate of the Defunct within Three years after the Defunct’s Death, are always to be preferred to the Creditors of the Apparent Heir; and by the latter of which it is provided that the Debts and Deeds of an Apparent Heir, Three years in possession, are to be effectual against any party passing him over and making up Titles to the Lands, and that the Heir-Apparent shall be himself subjected to Universal Liability, where he has—without being served or entered Heir—entered upon

(z) Unrecorded—*i.e.*, Unfeudalised by Registration in the Register of Sasines.

(a) *Vide supra*, p. 53 *et seq.*

possession of his Ancestor's Estate or purchased any Right thereto, or to any Diligence or other Right affecting the same.

(3) *Effect of Decree of General Service, with or without Specification annexed.*

A Decree of General Service vests in the Heir all Heritable Rights belonging to his Ancestor which cannot be or do not require to be perfected by Infestment, and it also entitles the Heir served to take up and pass Infestment upon all open Procuratories of Resignation, Precepts of Sasine, and Unrecorded Conveyances to which his Ancestor had Right. But it at the same time fixes upon him a General Representation, and subjects him to Universal Liability for all the Debts and Deeds of the Ancestor. (*Vide supra*, p. 76.)

This Liability, however, as we have seen, may be limited to the Value of certain specified portions of his Ancestor's Estate by Annexing to the Petition for General Service a "Specification," (b) in which case the Sheriff, in pronouncing his Decree of Service, is (c) to make reference to the Specification, and to limit the Decree of Service to the Lands therein described, and the effect of the Decree is to be taken and held in law to be so limited. A copy of the Specification is to be embodied in the Extract of the Decree and recorded as part thereof; and every such Decree of General Service, whether obtained under the present Act or the Act of 1847, is to infer only a Limited Passive Representation of the Deceased, and the person thereby served as Heir is to be liable in respect of such Service for the Deceased's Debts and Deeds only to the Extent or Value of the Lands contained in the Specification.

8. *General Arrangements as to the Sheriff of Chancery, and other Sheriffs.*

(1) *Acts of Sederunt to be passed.*

It has been already mentioned that the Court of

(b) *Vide supra*, p. 76.

(c) The Act, § 49.

Session is by § 51 empowered by Act of Sederunt to regulate in all respects the Proceedings under the Act before the Sheriff of Chancery or Sheriffs of Counties.(d)

(2) *Appointment and Remuneration of Sheriff and Sheriff-Clerk of Chancery.*

The Act also, § 52, provides for the appointment of the Sheriff and Sheriff-Clerk of Chancery—the latter Officer being also to Act as Clerk to the Presenter of Signatures in Exchequer. §§ 54 and 55 provide for the Remuneration and Retiring Allowances of these Officials; and §§ 56 and 57 relate to Compensation to be awarded to certain Officers under the Act of 1847.

(3) *Agents who may Practise in Services.*

By § 53 Agents qualified to practise before the Court of Session, or before any Sheriff-Court, are to be allowed to practise in Petitions of Service both before the Sheriff of Chancery and in the ordinary Sheriff-Courts.

(4) *Depending Services, &c., to be proceeded with after Act takes effect.*

By § 58 it is provided that all Petitions for Service depending at the Commencement of the Act [31st December 1868] before the Sheriff of Chancery or the Sheriff of any County under the Act of 1847 shall thereafter depend before the Sheriff of Chancery or the Sheriff of such County respectively acting under this Act, and shall be taken up by such Sheriff at the stage at which the proceedings have arrived at the Commencement of the Act, and shall be thereafter proceeded with by the Sheriff according to the provisions of this Act as if the same had

(d) *Vide supra*, pp. 72, 83, and p. 90, note (v). An Act of Sederunt was passed by the Court on 14th July 1847 to 'Regulate Publication in Services,' and the 'Fees of Sheriff-Clerks therein.' That Act was with some variations made permanent by an Act of Sederunt, dated 17th Nov. 1849, and the same will, in terms of § 162 of the present Act, remain in force until the Court shall pass a new Act of Sederunt under this Act.

not been presented to such Sheriff until after the Commencement of the Act; and the Remit already mentioned in any process of Advocation, Appeal, or Reduction is to be made by the Court of Session to the Sheriff to whom the Petition or Petitions advocated or appealed, or in which the Decree under Reduction may have been pronounced, was originally presented, or before whom the same would have depended, if the same had not been presented till after the Commencement of the Act.

(III.) COMPLETION OF TITLE OF ADJUDGER.

Nature of Process of Adjudication.

We have hitherto been dealing with the Completion of the Title of a party who has derived his Right to Lands either by direct Voluntary Disposition or Conveyance, *inter vivos* or *Mortis Causa*, from the Owner, or by the Legal Method of Transmission from the Dead to the Living, by means of Service. We shall now shortly explain the manner in which a party is enabled to obtain a Judicial Transfer to himself of Lands belonging to another by the Legal Process, which is known as Adjudication.

It does not fall within the scope of the present work to treat at length of the Nature of this Process. It is enough to say that it may be resorted to for the purpose of attaching Lands either in Payment or in Security of the Debts of the Owner, or in Implement of an express or implied Obligation by the Owner to convey the Lands. Should the Owner be dead, the Process may be carried on against his Heir. Where the Owner is in life, and has completed his Titles to the Property, the Process is simply one of Adjudication of the Lands, and is not in any way affected by the present Act, further than by the Declaration in the Interpretation Clause, that Decrees of Adjudication, whether for Debt or in Implement, are to be regarded as "Conveyances;" thus

enabling the Adjudger to obtain Infestment in the Lands adjudged, by Recording his Decree as a Conveyance in the appropriate Register of Sasines.

It is with cases in which the Owner of the Lands is dead, or has Right to the Lands merely as Apparent Heir, without having made up Titles thereto, that the Branch of the Statute now under consideration deals.

The circumstances under which the Procedure now to be explained is usually adopted are generally—

- (1) Where the Owner of Land has died indebted to the Adjudger.
- (2) Where the Owner of Lands has died, leaving an imperfect Disposition and Settlement of the same, containing or implying an Obligation on his Heir to make up Titles thereto, and convey them to the Disponee; or has, before his Death, granted Missives of Sale or other Obligation to convey the lands, but has not executed a formal conveyance thereof; and
- (3) Where the Debtor is in life, but has Right to the Lands as Apparent Heir of the former Owner, and has not made up Titles to the Lands.

In the first and second of these Cases, the Creditor or Disponee must begin by Constituting the Debt or Obligation of the Ancestor against the Heir; and after having done so, he may Adjudge the Lands in Payment or in Security of the Ancestor's Debt, or in Implement of his Obligation.

In the third case, as the Debt is owing by the Heir himself, Constitution is not required as a preliminary step to the Adjudication.

1. *Procedure in Adjudication prior to 1847.*

Under the Law as it stood prior to 1847, the proceedings in all these Cases were very cumbrous, dilatory, and expensive; and a short explanation of their general nature is necessary to enable us to understand the full import and effect of the alterations on the practice introduced in that year, and re-enacted in the present Statute.

(1) *General Charge and Summons of Constitution.*

When the Debtor or Obligant whose lands were to be adjudged was dead, the Creditor in the Debt or Obligation was obliged, in the first instance, to charge the Heir of the Debtor or Obligant to enter as Heir in General to his Ancestor within Forty Days, under certification that if he failed the Creditor should have action against him in the same manner as if he had entered. This was done by means of a Writ issued in the Sovereign's name and passing the Signet. It was termed a "*General Charge*," and was intended merely as the foundation of proceedings against the Heir. And although the Charge might be given during the currency of the *Annus Deliberandi*, yet no Summons could be raised for Constituting the Debt until after the expiration of the year, unless indeed during the course of it the Heir intromitted with the effects of the deceased, and so incurred a Passive Title. An Action of Constitution was raised after the expiration of the General Charge, and the Heir, if he chose, might appear and Renounce the Succession, in which case a Decree *Cognitionis causa tantum* was obtained at the instance of the Creditor. Such a Decree was termed a Decree of Cognition, its chief object being to ascertain the amount of the debt; but as it proceeded on a Renunciation by the Heir, it could not affect either his person or his separate property, and it was not taken where the Action was brought to Constitute against the Heir the Ancestor's obligation to convey the Lands with a view to adjudge the Lands in Implement of that Obligation. Where no appearance was made for the Heir, or where he appeared and failed successfully to oppose the Conclusions of the Summons, Decree was pronounced against him as lawfully charged to enter Heir, which had the effect of constituting him personally the debtor or obligant in the Debt or Obligation, and, in the case of a *Debt*, gave to the Creditor Action against him and his own estate, as well as against the estate of the Ancestor.

(2) *Special Charge, General Special Charge, and Summons of Adjudication.*

The Debt or Obligation having been constituted against the Heir, it was necessary that the Heritable Estate which belonged to the Ancestor should be vested in the Heir or made liable to the Diligence of the Creditor; and for this purpose it was necessary to give to the Heir either a "*Special*" or a "*General Special Charge*."

The *Special charge* was given where the Ancestor had died Infeft in the Lands sought to be adjudged. Like the General Charge it was a Writ issued in the Sovereign's Name, and passing the Signet. It narrated the *General charge* and the procedure for constituting the Debt or Obligation, and set forth that the Heir would not enter himself Heir in Special of the Heritage in which his Ancestor died infeft so as to enable the Creditor to Adjudge that Property, and it ordained the Heir within Forty Days to enter himself Heir in Special of his Ancestor, under Certification that if he failed the Creditor should have Action of Adjudication against him and the Lands precisely as if he were so entered. The execution of this charge was by the Act 1540, c. 106, made equivalent *fictione juris* to the Heir's actual Entry,—and on the expiration of the Forty Days an Adjudication might be led by the Creditor which had the effect of judicially transferring to him the subjects to which the Heir had been charged to enter, and that in payment or Security of the Debt owing by the Ancestor, or in Implement of the Ancestor's Obligation.

Where the Right of the Ancestor to the Heritable Subjects belonging to him was merely a Personal Right, and not completed by Sasine, the Charge given to the Heir was termed a "*General Special Charge*," charging him to make up his titles to the unexecuted Procuratories of Resignation, or Precepts of Sasine, &c., to which the Ancestor had right, under Certification that if he failed the Creditor should have the same Action against the Heir and

the Heritage that he would have had if he were Retoured Heir in General of his ancestor. After the expiration of the *induciæ*, the General Special Charge might be followed by Adjudication, to the effect above mentioned.

Where the Heir himself, and not the Ancestor, was the Debtor or Obligant, there was of course no room for a General Charge, or an Action of Constitution. All that the Creditor could have in view in such a Case was that his Debtor should complete his Titles to the Property to which he had succeeded, so that it might be attached for his own Debt. But for this purpose it was necessary to raise Letters of Special, or of General Special Charge, according to the state of the Titles of the subjects of the Succession; and on the expiration of that Charge, whether the Heir entered or not, the subjects could be effectually attached by Adjudication, at the instance of his Creditor. But even in this case the Heir was not obliged to obey the Charge until the expiration of the *annus deliberandi*, and the Creditor could not go on with his proceedings during the year, unless the Heir chose either to obey the Charge, or to assume Possession of the Estate, or Grant Conveyances of it.

The process of Adjudication *for Debt* was introduced by the Act 1672, c. 19, and under the provisions of that Statute it was necessary on the Summons of Adjudication which followed on the *Special* or *General Special Charge*, to libel and conclude for Special Adjudication of so much of the Lands as might be required for Payment of the Debt, and for a General Adjudication of the Lands only as the Alternative of Special Adjudication. This was found to be inconvenient in practice, and was abolished by the Lands Transference Acts of 1847,^(e) which provided that it should not be necessary to libel or conclude for Special Adjudication, and that it should be lawful to libel, and conclude and decern for General Adjudication, without such Alternative. The present Act^(f) re-enacts this provision of the repealed Acts.

(e) 10 and 11 Vict. c. 48, § 18; 10 and 11 Vict. c. 49, § 10.

(f) The Act, § 59.

The Action of Adjudication and Implement did not owe its origin to the Act 1672, c. 19. It flows from the equitable Jurisdiction of the Court to enforce Specific Obligations, and it concludes simply for Adjudication of the Lands embraced within the Disposition or Obligation sought to be enforced, the Alternatives of Special and General Adjudication being neither necessary nor appropriate.

(3) *Charges abolished.*

(4) *Combined Action of Constitution and Adjudication.*

The repealed Statutes of 1847 (*g*) also abolished all Charges,—whether General, Special, or General Special,—and provided in certain cases for Combining the Actions of Constitution and of Adjudication in the same Summons against an unentered Heir. The Titles to Land Acts of 1858 and 1860 further extended this privilege of combining the two Actions, and simplified the procedure in such cases. The provisions of these several Statutes relating to Charges, Constitution, and Adjudication, are now consolidated in the 60th section of the present Act, the leading provisions of which we shall briefly explain.

2. *Procedure in Adjudication after 1847 and under the present Act.*

(1) *Procedure in Action of Constitution.*

The Section (§ 60) after re-enacting the abolition of Charges, goes on to provide that in an Action of Constitution of an Ancestor's Debt or Obligation against his Unentered Heir the Citation on and Execution of the Summons in such Action shall be held to imply and be equivalent to a General Charge—the *induciae* of which shall expire with

(*g*) 10 and 11 Vict. c. 48, § 16; 10 and 11 Vict. c. 49, § 8. These Acts also abolished *Bills* as preliminary to Summonses of Adjudication and of Ranking and of Sale,—but as the Act 13 and 14 Vict. c. 36, § 18, abolished Bills for *all* Summonses, it was unnecessary to re-enact the abolition in this Act.

the *induciæ* of such Summons and shall infer the like Certification as such General Charge. The nature of that Certification has been already explained. (*h*)

The procedure in the Action, and the Decree to be pronounced therein are to be the same in all respects as would have been competent had such Summons been preceded by Letters of General Charge, duly executed against the heir according to the law and practice prior to 30th September 1847, and such Decree is to be a valid Decree of Constitution.

(2) *Procedure in Action of Adjudication.*

The same section (§ 60) also provides that in an Action of Adjudication, whether for Debt or in Implement, against an unentered Heir, following on such a Decree of Constitution, or in an Action of Adjudication against an Unentered Heir founded on his own Debt or Obligation, the Citation on and Execution of the Summons of Adjudication shall be held to imply and be equivalent to a Special Charge, or General Special Charge, as the circumstances may require—the *induciæ* of which Charge shall expire with the *induciæ* of such Summons, and shall infer the like Certification (*i*) with such Special Charge, or General Special Charge, as the case may be. The procedure in the Action, and the Decree to be pronounced therein, are to be the same in all respects as if the Summons had been preceded by Letters of Special Charge, or General Special Charge, as the case may be, duly executed against the Heir according to the law and practice in use prior to the 30th September 1847, which Decree is to be a Valid Decree of Adjudication whether for Debt or in Implement.

(3) *Procedure in Combined Action of Constitution and Adjudication.*

The same section (§ 60) further provides that in Actions of Constitution and Adjudication against an un-

(*h*) *Vide supra*, p. 98.

(*i*) *Vide supra*, p. 99.

tered Heir on account of his Ancestor's Debt or Obligation, for the purpose of attaching the Ancestor's heritable estate, it shall not be necessary to raise a separate Summons of Constitution, and a separate Summons of Adjudication, but both may be combined in one Summons,^(k) whether the Heir renounces the Succession or not; and the Citation on and Execution of such Summons shall be held to imply, and be equivalent, according to the circumstances of each case, to a General Charge (*i.e.*, where the Heir is to renounce the Succession), or to a General Charge and a Special Charge (*i.e.*, where the Heir is not expected to renounce, and Ancestor had been infeft in the Lands), or to a General Charge and a General Special Charge (*i.e.*, where the Heir is not expected to renounce, and Ancestor's Right to the Lands was merely Personal), the *induciae* of which Charges shall expire with the *induciae* of such Summons, and shall infer the like Certification^(l) with such General Charge,—or General Charge and Special Charge,—or General Charge and General Special Charge,—as the case may be.

The procedure in the combined Actions of Constitution and Adjudication, and the Decree or Decrees to be pronounced therein, are to be the same in all respects as if

(k) It has been, we understand, objected in some quarters that it would have been better to have provided in the Act for the Combination in every case of the Summons of Constitution with that of Adjudication, and to have dispensed with the enactments already noticed regarding the separate Summons of Constitution and the separate Summons of Adjudication. There are, however, instances of by no means rare occurrence, in which it is or may be desirable to have separate Summonses. And for this reason, and also because it would have been extremely difficult to have explained in the Act clearly and intelligibly the Effect of the citation on the combined Summons as a substitute for the various kinds of Charges, the Legislature has, as we think wisely, not only given to parties the option of using Separate Summonses, but has, by distinctly describing the effect which the Citation in each separate Summons is to have as a substitute for the Charge which formerly preceded it, enabled parties at once to understand the short description which is given of the various kinds of Charges which are implied in the Citation on the Combined Summons.

(l) *Vide supra*, pp. 98, 99

the Summons or Separate Summonses had been preceded by the Appropriate Charges, according to the Law and Practice in use prior to 30th September 1847, which Decree or Decrees are to be valid Decrees of Constitution or of Adjudication, whether for Debt, or in Implement; or of Constitution and Adjudication, whether for Debt and in Implement, as the case may be.

In such Combined Action it is made competent to pronounce Decree of Constitution and Adjudication in one and the same Interlocutor, and to extract the same in one and the same extract, which Decree is to have the full force and effect of a Decree following upon a Summons of Constitution, preceded by Letters of General Charge, and also of a Decree following upon a Summons of Adjudication, whether for Debt or in Implement, preceded by Letters of Special or of General Special Charge, as the case may be, notwithstanding anything in the Act 1540, c. 106, or 1621, c. 27.

(4) *Six Months substituted for the Annus Deliberandi.*

The period within which Actions of Constitution and of Constitution and Adjudication against an Apparent Heir, on account of his Ancestor's Debt or Obligation, for the purpose of attaching the Ancestor's heritable estate, and Actions of Adjudication against such heir on account of his own Debt or Obligation, for the purpose of attaching such estate, was, by the Titles to Land Acts of 1858 and 1860,^(m) reduced from one year to six months from the date of the party becoming Apparent Heir. These enactments are re-enacted by the present Act, § 61.

(5) *Effect of Decrees of Adjudication, Sale, &c.*

The effect of the Decree of Adjudication thus obtained, or of a Decree of Sale,⁽ⁿ⁾ was described by the former Acts of 1847, 1858, and 1860, the provisions of which Statutes

(m) 21 and 22 Vict. c. 76, § 27; 23 and 24 Vict. c. 148, § 16.

(n) The Decree of Sale is the Decree pronounced in a process of Judicial Sale. It is truly an Adjudication. See Bell's Prin. § 833.

have now been consolidated by the present Act, § 62, which provides that in all cases a Decree of Adjudication, whether for Debt or in Implement, or a Decree of Constitution and Adjudication, whether for Debt or in Implement, or a Decree of Sale, if duly obtained in the form prescribed by the present Act,—or obtained, if prior to the commencement of this Act, in the form then in use,—shall, except in the case where the subjects contained in the Decree are Heritable Securities,^(o) be held equivalent to and have the legal operation and effect of a Conveyance in ordinary form of the lands therein contained in favour of the Adjudger or Purchaser by the Ancestor of such Apparent Heir, or by the Owner or Seller of the Lands adjudged or sold (although in nonage or of unsound mind); to be holden, in the case of lands not held by Burgage Tenure, in the manner and to the effect and subject to the provisions enacted and provided by the 6th Section of the present Act^(p) in the case of Conveyances in which no Manner of holding is expressed, and to be holden of Her Majesty in free Burgage in the case of lands held by Burgage Tenure.

(6) *Mode of Completing Feudal Title of Adjudger or Purchaser.*

The Feudal Title of the Adjudger or Purchaser of these lands may be completed in various ways.

1. He may expedite Infestment^(q) on the Decree as a

(o) Heritable Securities are excepted from this Section, being specially dealt with in that part of the Statute which deals with Redeemable Rights. *Vide infra*, Remarks on, § 129.

♣(p) *Vide supra*, p. 23.

(q) By the Transference of Lands Act of 1847 (10 and 11 Vict. c. 48, § 19) it was provided that Decrees of Adjudication, whether for Debt or in Implement and Decrees of Sale, might contain a Warrant for Infestment, equivalent to a Precept of Sasine, on which the Holder of the Decree might expedite an Instrument of Sasine. As it is no longer necessary to Complete a Title by Sasine, it was of course unnecessary that in the present Act provision should be made for inserting in the Decree of Adjudication or of Sale any Warrant for Infestment, the Decree being under the Interpretation Clause of the present Act a "Conveyance," and as such capable of being

Conveyance, in the manner provided by the present Act in reference to Ordinary Conveyances, (r)—i.e., by recording the Decree, with or without a Notarial Instrument thereon, and with Warrant of Registration, in the Appropriate Register of Sasines; or

2. He may also, when the lands are not held by Burgage Tenure, obtain from the Superior a Charter of Adjudication or of Sale of such lands, and expedite infeftment on such Charter in common form, i.e., by Instrument of Sasine, if the Charter contains a Precept of Sasine, or by using the Charter as a Conveyance, and recording it, with or without a Notarial Instrument thereon, and with a Warrant of Registration, in the Appropriate Register of Sasines.

3. If the party taking infeftment on the Decree or Charter is not the original Adjudger, but has acquired right to the Decree or Charter by Assignment, Service, or otherwise, he will of course complete his Title in one or other of the modes in which, as we have already shown, Titles may be completed by a party in right of an Ordinary Conveyance, not originally granted in his own favour. (s) Further, where the Ancestor of such Apparent Heir, or the Owner or Seller of the lands adjudged or sold, was entered with his Superior, or was in a situation to charge such Superior, under the powers contained in the present Act, to grant entry by Confirmation, and where the Adjudger or Purchaser, or the party in Right of the Decree of Adjudication or of Sale, has been himself infeft on the Decree as aforesaid, such Infeftment is to operate in favour of the party infeft as an effectual Feudal Investiture in the said lands in terms of such Decree, holding Base of the party whose lands are adjudged or sold and his Heirs until Confirmation thereof shall be granted by the Superior of the lands, in the same manner and to the same effect as if the party whose lands are sold or adjudged had granted a Disposition of the lands to the Adjudger or Purchaser in the terms of the said

itself registered in the Register of Sasines as a "Conveyance," the effect of such Registration being the Infeftment of the Adjudger.

(r) *Vide supra*, pp. 40, 49.

(s) *Vide supra*, p. 53, *et seq.*

Decree, with an Obligation to Infest *a me vel de me* to be completed by Confirmation, and a Precept of Sasine, and as if the Adjudger or Purchaser or other party had been infest on such Precept. The effect of such Confirmation (t) is to make the lands hold immediately of and under such Superior.

The Rights of the Superior are, however, protected by a declaration that his Right to the Composition, payable by the Adjudger or Purchaser as due under the existing law is reserved entire, and the Adjudger or Purchaser, by taking Infestment on any such Decree in any of the modes above mentioned, is to become indebted in such Composition to the Superior, and is to be bound to pay the same on the Superior tendering a Charter or Writ of Confirmation, whether such Charter or Writ shall be accepted or not; and the Superior is to be entitled to recover such Composition as accords of law. It is further provided that such Infestment, on any such Decree, shall, without prejudice to any other Diligence or Procedure, be of itself sufficient to make the Adjudication effectual in all questions of Bankruptcy or Diligence. For the further protection of the Rights of the Superior, it is provided—as a qualification of the *implied a me vel de me* Holding—that where the Investiture of any lands has imposed or shall impose a Prohibition against Subinfeudation or Alternative Holding—although the Adjudger or Purchaser is, in respect of his Recorded Decree, or Sasine, or Notarial Instrument, and notwithstanding any such Prohibition, to be deemed and taken to be duly infest in the lands adjudged or sold as from the date of recording such Decree or Instrument—such Infestment is to be without prejudice to the Right of the Superior to require the Adjudger or Purchaser to enter forthwith as accords of law, and to deal with him as with a Vassal unentered.

(t) This Confirmation may be either by Charter or Writ of Confirmation, as to which *vide infra*,—our Remarks on Entry with the Superior by Confirmation, p. 130.

It only remains to be noticed, that in Summonses and Decrees of Adjudication, of Constitution and Adjudication combined, and of Declarator and Adjudication and of Sale—all of which are included as Conveyances in the Interpretation Clause—it is competent to refer to Conditions of Entail and Real Burdens in terms of §§ 9 and 10 of this Act, and to refer to the Description of Land in terms of § 11 of this Act, in place of inserting the Conditions, Burdens, or Description at full length.

(IV.) COMPLETION OF TITLE WITH SUPERIOR.

I. ENTRY WITH THE CROWN.

We have already ^(u) mentioned that the form of entry with the Crown as Superior was greatly simplified by the Crown Charters Act of 1847, ^(v) and a further simplification was made by the Titles to Land Act of 1858. ^(w) The provisions of these statutes have been re-enacted and consolidated in the present Act by sections 63 to 96, both inclusive, and as very little alteration is therein made upon the practice which was introduced and has been followed since 1847 with the modifications introduced in 1858, any lengthened comment upon this portion of the Statute is unnecessary. We shall therefore, in our remarks on this branch of the Statute, confine ourselves to a very short statement of the leading objects of each section, indicating where necessary any alteration which may have been made by the present Act upon the former practice.

(1) *Signatures Abolished.*

§ 63 re-enacts the provision of 10 and 11 Vict. c. 51, § 1 for the abolition of Signatures in Exchequer, and of the issuing of Precepts as preliminary to the obtaining and

^(u) *Vide supra*, p. 5.

^(v) 10 and 11 Vict. c. 51.

^(w) 21 and 22 Vict. c. 76.

granting of any Crown Writ,(x) and directs that all Crown-Writs are to be obtained in the manner directed by the present Act and not otherwise.

(2) *Draft Crown Writ and Note to be Lodged with Title-Deeds in Office of Presenter of Signatures.*

§ 64 re-enacts 10 and 11 Vict. c. 51, § 2, and directs that Crown Writs are to be obtained by lodging in the Office of the Presenter of Signatures the Draft of the proposed Writ, with a Note in the form of Schedule (S),(y) praying for a Crown Writ in terms of the Draft, and the date of lodging the Note is to be marked thereon by the Presenter of Signatures, or his Clerk.(z) The Draft Writ is to be prepared by the Agent of the party desiring the Writ. The Agent must be a Writer to the Signet, and he must indorse his subscription upon the Draft Writ, and it will be seen by Schedule (S) that he is also to sign the Note which is to be lodged along with the Draft.

Along with the Note and Draft there are to be lodged the last Crown Writ and Retour or Decree of Service

(x) By the *Interpretation* "Clause" of the Act "*Crown Writs*" are to extend to and include all Charters, Precepts, and Writs from Her Majesty, and from the Prince.

The word "*Crown*" is to extend to and include Her Majesty and the Prince.

The words "*Her Majesty*" are to extend to and include Her Majesty and Her Royal Successors; and the word "*Prince*" is to extend to and include the Prince and Steward of Scotland and his Successors.

The word "*Charter*" and the word "*Writ*" are to extend to and include all Crown Writs as well as all Charters, Precepts, and Writs from Subjects-superior.

It will be seen that, in conformity with these declarations in the *Interpretation Clause*, the words "Crown Writ" are used throughout the Statute as a short expression for every species of Charter, Precept, or Writ granted by the Sovereign or Prince.

(y) The Act, Schedule (S). See *Appendix*, p. 103.

(z) It is by § 89 of the Act provided that the lodging of the Draft and Note shall, in competition of Diligence, and in all other cases, be equivalent to the presenting of a Signature in Exchequer, and that the Recording of a Copy of such Note, and of an Abstract of the Draft Writ in the Register of Abbreviates of Adjudication, is to be deemed and held to be equivalent

of the Lands and all the Title Deeds of the Lands subsequent thereto, together with evidence of the Valued Rent when necessary, and an Inventory and Brief of the Titles. These productions are necessary in order—(1) to shew the Title of the applicant to the Lands and his right to obtain an Entry; and (2) to ascertain the Duties payable by him to the Crown, and the Conditions of the Grant.

(3) *Draft Crown Writ to be revised by the Presenter of Signatures.*

§ 65 re-enacts 10 and 11 Vict. c. 51, § 3, and provides for the Revisal of the Draft by the Presenter of Signatures, who is for that purpose to require the attendance of the Agent of the person applying for the Writ for the purpose of receiving his explanations, and he is to authenticate each page of the revised Draft, and each of the alterations and corrections thereon, if any, with his Initials, and to mark on the Draft that it has been revised by him, and the Date of such Revisal being completed.

(4) *Rectification of Mistakes in former Titles.*

§ 66 re-enacts 10 and 11 Vict. c. 51, § 4, and provides for the Rectification of any Mistake which may have occurred in the Terms of the last Crown Writ or Retour or Decree of Service, to the prejudice either of the Crown or of the Vassal,^(a) but no such Rectification is in either case to be allowed, nor is the Draft as rectified to be held as finally revised or authenticated until the same shall have been reported by the Presenter of Signatures to and approved by the Lord Ordinary in Exchequer causes.

to Recording in the said Register an Abstract of the Signature. As to the importance of priority in lodging the Signature, see the case of *Viscount Teviot v. Earl of Linlithgow*, 12 Feb. 1697, Fount. i, p. 767; Mor. p. 5110.

(a) If the *Vassal* desires the Rectification, he must set forth the same in a Note to be lodged with the Presenter of Signatures.

(5) *Intimation of proposed Rectification to be made to Solicitor for Commissioner of Woods and Forests.*

§ 67 contains a new provision, to the effect that in every case in which the Draft of any Crown Writ containing any proposed rectification shall be so laid before the Lord Ordinary, Intimation thereof and of the Relative Report of the Presenter of Signatures, or of the Note for the Vassal, (b) shall be made by the Agent applying for the Writ

“to the Solicitor in Scotland for the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, and the Lord Advocate shall be entitled to appear in name and on behalf of the Crown and on behalf of the said Commissioners, or either of them in all future Proceedings relating to the said Crown Writ ; and the Lord Ordinary, before finally approving of any such Draft Writ, shall be satisfied that one Calendar Month's previous Notice in Writing of such Draft having been laid before him has been given to the said Solicitor, accompanied by a Copy of the said Draft Writ and of the Report by the Presenter of Signatures, or Note, as the case may be.”

This enactment has been introduced into the Act in order to prevent alterations being made in the Writ to the prejudice of the Crown as to Conditions, *Reddendo*, or Enlargement of the Grant, especially as to Salmon-Fishings, without the knowledge of the guardians of the Crown Revenues.

(6) *Procedure where Prior Crown Writ is withheld or mislaid.*

§ 68 re-enacts 10 and 11 Vict. c. 51, § 5, and provides that the Presenter of Signatures, or the Person applying for the Writ, may refer to a Copy of the last Crown Writ or Retour or Decree of Service as engrossed in the Register of the Great Seal, or in the Register of Retours or Record of Services, where the original is withheld by the person applying for the Writ, or is from any good cause inaccessible.

(b) The Note for the Vassal is the Note referred to in § 66. See Note (a), p. 110.

(7) *Amount of Crown Duties to be fixed.*

§ 69 re-enacts 10 and 11 Vict. c. 51, § 6, and provides for the ascertainment of the Composition or other Duties due and payable to the Crown on granting the Writ. This is to be ascertained by the Presenter of Signatures, with the aid of the Auditor in Exchequer; but in ascertaining and fixing the amount, no charge is to be added for the expense of collecting the same.

(8) *Clerk's Fees.*

§ 70 re-enacts 10 and 11 Vict. c. 51, § 7, and provides for payment of certain Fees to the Clerk of the Presenter of Signatures.

(9) *Copy of Revised Draft to be presented to Party.*

§ 71 re-enacts 10 and 11 Vict. c. 51, § 8, and provides that, while the Draft remains in the Office of the Presenter of Signatures, it may be inspected by the Party applying for the Crown Writ, or his Agent, and that a Copy thereof shall be furnished on demand, on payment of certain fees.

(10) *If no Objections, the Revised Draft is to be attested, and Crown Writ prepared.*

§ 72 re-enacts 10 and 11 Vict. c. 51, § 9, and provides that where there are no Objections to the Revised Draft, the same is to be docketed by the Agent of the Vassal and by the Presenter of Signatures, which Docket is to certify the Approval of the Draft and is to set forth the Date of signing the same; and the docketed Draft is to be transmitted by the Presenter of Signatures to the Office of the Director of Chancery;

“and where such Writ is to be engrossed on any Deed or Conveyance, such Deed or Conveyance shall be transmitted along with said draft,”(c)

(c) The words here quoted are new, and are rendered necessary in consequence of the present Act providing that all Crown Writs, whether engrossed on Conveyances or in the form of Separate Charters, shall now be

and such draft shall form a valid and sufficient warrant for the immediate preparation of the Writ in Chancery in terms of such draft.

(11) *Crown Writs may be applied for at any Time of the year.*

§ 73 re-enacts 10 and 11 Vict. c. 51, § 10, and provides that Crown Writs may be applied for, revised, and delivered at any Time of the year, although not within Term Time in Exchequer.

(12) *Objections to Revised Draft.*

§ 74 re-enacts 10 and 11 Vict. c. 51, § 11, and provides that the Person applying for the Crown Writ, if dissatisfied with the Revised Draft, may state Objections thereto, or against the Amount of Duties and Composition marked thereon as payable, which Objections are to be in the Form of a Short Written Note, without Argument, to be lodged in the Office of the Presenter of Signatures, and subscribed by the Party's Agent, and the Date of lodging the Note is to be marked thereon by the Presenter or his Clerk.

(13) *Lord Ordinary in Exchequer Causes to dispose of Objections.*

§ 75 re-enacts 10 and 11 Vict. c. 51, § 12, and provides that the Note of Objections and whole Proceedings are to be laid before the Lord Ordinary in Exchequer Causes, who is to hear parties, and may cause such Alterations and Corrections as shall appear to him proper, either with reference to the Terms of the Draft or to the Amount of Duties or other Payments, to be made on the Draft or on a Separate Paper, and shall authenticate the Draft and relative Paper with his Signature, and appoint the Writ as so altered and corrected to be prepared and executed; and

signed by the Director of Chancery or his Depute or Substitute. Under the Titles to Land Act of 1858, Crown Writs engrossed on Conveyances were directed to be signed by the Presenter of Signatures, so that it has not hitherto been necessary to transmit such Conveyances to Chancery. See the present Act, § 78, and Schedules (T), (U), (Z), and (CC).

his Judgment or Deliverance is to form a valid and sufficient Warrant for the preparation in Chancery of the Writ, as altered and corrected.

(14) *Procedure where Objections are repelled.*

§ 76 re-enacts 10 and 11 Vict. c. 51, § 13, and provides for the case of the Objections being repelled by the Lord Ordinary, who is, in that case, to pronounce a Judgment, to be written on the Note of Objections and repelling the same, and the Judgment or Deliverance so pronounced is to form a valid and sufficient Warrant for the preparation in Chancery of the Writ as revised by the Presenter.

(15) *Refusal to revise how Complained of.*

§ 77 re-enacts 10 and 11 Vict. c. 51, § 14, and provides for the procedure where the Presenter has refused to revise the Draft for want of sufficient Production of Titles, which Refusal may be brought under Review of the Lord Ordinary in Exchequer Causes by a Note of Objections for the Person who has applied for the Writ, and if the Lord Ordinary does not repel the Objections, but is of opinion that a sufficient Title has been shown to authorise the Writ being granted, he shall in that case remit to the Presenter to proceed with the Revisal of the Draft.

(16) *Crown Writ as revised to be Engrossed in Chancery and delivered.*

§ 78 re-enacts 10 and 11 Vict. c. 51, § 15, as altered and modified by 21 and 22 Vict. c. 76, § 32; and provides that as soon as the Draft Crown Writ shall have been Docquetted as Revised and Approved in manner before provided, or, in case of Objections being stated, as soon as the same shall have been disposed of by the Lord Ordinary in manner before directed, the Draft is to be officially transmitted by the Presenter of Signatures to the Office of the Director of Chancery; and where the Writ is to be engrossed on any Deed or Conveyance, such Deed or Con-

veyance is to be transmitted along with the Draft. Immediately thereafter the Writ is to be engrossed in Chancery in terms of the Draft, as finally Adjusted, Signed, and officially Transmitted, and the Writ is to be signed by the Director of Chancery, or his Depute or Substitute. (d)

Provision is then made for dispensing with the sealing of Crown Writs, unless the receiver of the Writ requires the appropriate seal to be affixed, in which case the fact that it has been required and has been affixed, and the date on which the Seal is actually appended, are to be stated at the conclusion of the Writ. It is also provided that the Writ when Signed,—or Signed and Sealed,—is to be recorded in Chancery in the manner directed in § 87, and after being recorded, is to be delivered to the person applying for the same, or his agent, upon payment of certain Fees.

(17) *Crown Writ so prepared to be valid.*

§ 79 re-enacts 10 and 11 Vict. c. 51, § 16, and provides that the Crown Writ so Signed,—or Signed and Sealed,—and Recorded and Delivered, shall be in all respects a Warrant for Infetment in the Lands described or referred to in the Writ, as valid and effectual as any Crown Writ of the same description formerly in use to be granted notwithstanding that the same has not followed on any Signature presented and passed in Exchequer or Precept directed thereon.

(18) *Ceremony of Resignation abolished.*

§ 80 re-enacts 10 and 11 Vict. c. 51, § 17, and abolishes the Ceremony of Resignation, (e) the ingiving of the Note applying for the Crown Writ being held to be

(d) Every Crown Writ, whether it be a separate Charter, or Precept, or Writ of *Clare Constat*, or a Writ engrossed upon a Deed or Conveyance, is now to be signed by the Director of Chancery, or his Depute or Substitute. Under the Act of 1858, all Writs engrossed upon Deeds or Conveyances were required to be signed by the Presenter of Signatures.

(e) By the Act 8 and 9 Vict. c. 85 (1845), § 9—(See *Appendix*, p. 88)—Instruments of Resignation were abolished, and the deduction of the Titles

equivalent to Resignation in terms of the Procuratory or Clause of Resignation.

(19) *Entry with the Crown by Resignation.*

§ 81 consolidates several portions of 10 and 11 Vict. c. 51, § 24, and 21 and 22 Vict. c. 76, § 8, and provides that Entry with the Crown by Resignation may be given, either by a Crown Charter of Resignation or by a Crown Writ of Resignation, the latter being engrossed on the Conveyance containing the Procuratory or Clause of Resignation. Infestment may be expedite on the *Crown Charter* of Resignation as upon any ordinary Conveyance; and where the *Crown Writ* of Resignation has been engrossed upon the Conveyance, Infestment may be obtained by Recording in the appropriate Register of Sasines the Conveyance with the Crown Writ engrossed thereon, and with a Warrant of Registration in the form of No. 1 of Schedule (H) also written upon the Conveyance. Such Infestment is equivalent to a Recorded Sasine following on a Crown Charter of Resignation in the old form. As however it might be held that by so recording together both the Deed or Conveyance, and the Crown Writ engrossed thereon, separate Infestments had been expedite on the Conveyance and Writ respectively,—thereby creating in the party infest an estate of Mid-superiority as well as an estate of Property, and necessitating Consolidation by Resignation *ad remanentiam* in his own hands,—a *proviso* is added to this section declaring that such simultaneous Registration shall *not* have the effect of an Instrument of Sasine following upon the *Conveyance*.

(20) *Form of Crown Charter or Crown Writ of Resignation.*

This is provided for by § 83, which consolidates parts of 10 and 11 Vict. c. 51, § 24, and of 21 and 22 Vict. c. 76,

therein as required by the Act 1698, c. 35, was ordered to be made in the Charter of Resignation. The *Ceremony* however of Resignation was continued in the Case of Application to the Crown for Entry by Resignation until abolished in 1847.

§§ 6 and 8, and substantially re-enacts the Schedules of these Acts with some slight alterations. The Forms enacted by the present Act are contained in Nos. 1 and 2 of Schedule (T).^(f) It will be observed, however, that the Schedules of the present Act are fuller and contain more minute directions as to the Form and Contents of the Writ or Charter than those in the previous Acts; and, in particular—(1) that the Crown *Writ*, as well as the Crown *Charter* of Resignation requires the Title—*i.e.*, the Crown Title—by which the last Vassal was entered and infeft, to be set forth in the Writ, which was not necessary under the former Act; and (2) that the Crown *Charter* of Resignation under the present Act does not contain a Precept of Sasine.

As already mentioned, the Crown Writ of Resignation, which has hitherto been signed by the Presenter of Signatures, is now, like all other Crown Writs, and as directed by § 78, to be signed by the Director of Chancery or his Depute or Substitute.

(21) *Entry with the Crown by Confirmation.*

§ 82 consolidates portions of 10 and 11 Vict. c. 51, § 24, and of 21 and 22 Vict. c. 76, § 6, and provides that Entry with the Crown by Confirmation may be given either by a Crown Charter of Confirmation or by a Crown Writ of Confirmation, the latter being engrossed upon the Deed or Conveyance, which Writ is to have the same legal force and effect as a Crown Charter of Confirmation of such Conveyance.

(22) *Form of Crown Charter or Crown Writ of Confirmation.*

This is provided for by § 83, which consolidates portions of 10 and 11 Vict. c. 51, § 24, and of 21 and 22 Vict. c. 76, §§ 6 and 8, and substantially re-enacts the Schedules

(f) See *Appendix*, pp. 103 and 104. See also *infra*, pp. 143, 144, and Schedules there mentioned, as to Special Forms of Crown Writs of Resignation upon Forfeiture or Relinquishment of Superiorities.

of these Acts. The Forms enacted by the present Act are contained in Nos. 3 and 4 of Schedule (T).^(g) It will be observed, however, (1) that in the Crown *Writ* of Confirmation it is now necessary to specify the Name and Crown Title of the last entered Vassal, in room of whom the new Vassal is being entered by Confirmation; and (2) that the present Act gives only one Form of a Crown *Charter* of Confirmation, in place of two, which were given in the Act of 1847. The new Form of Charter simply confirms to the Vassal the Lands (under any Conditions of Entail or Real Burdens applicable thereto), and also the Deed or Conveyance which is to be confirmed in favour of the Vassal, as recorded in the Register of Sasines, specifying the Date thereof, and the Warrant of Registration thereon, if any, and the date and place of recording. By the *First* Form of the Crown Charter of Confirmation introduced by the Act of 1847,^(h) the Crown confirmed to the Vassal the Disposition in his favour, and Sasine thereon, and any other Writs which were necessary to be confirmed, in order to complete the Entry. By the *Second* Form of Crown Charter of Confirmation under that Statute,⁽ⁱ⁾ the Crown confirmed to the Vassal the Lands and the various Deeds, Instruments, or other Writings necessary to be confirmed. In either case the whole Deeds and Instruments requiring Confirmation were enumerated at length. As, however, under the present Act^(k) the Crown Charter of Confirmation of the Deed or Conveyance in favour of the Vassal, as well as all Charters, Writs, and Precepts, whether from the Crown or a Subject-Superior, is to operate as a Confirmation of all prior Conveyances, the Confirmation of which is necessary to complete the Vassal's Title,—the enumeration of any Deeds prior to the Conveyance actually confirmed in favour of the Vassal himself is rendered unneces-

(g) See *Appendix*, p. 105. See also *infra*, pp. 143, 144, and Schedules there mentioned, as to special Forms of Crown Writs of Confirmation upon Forfeiture or Relinquishment of Superiorities.

(h) 10 and 11 Vict. c. 51, Schedule (C), No. 2.

(i) 10 and 11 Vict. c. 51, Schedule (C), No. 3.

(k) The Act, § 115

sary, and there is no longer any occasion for the Two Forms of Charter which were formerly considered necessary or expedient. Another effect of § 115 is, to render it unnecessary to combine with the Charter of Resignation a Confirmation of the prior Titles, when the Grantor of the Disposition containing the Clause or Procuratory of Resignation was not himself entered with the Crown.

By a General Note appended to Schedule (T) it is declared that Writs and Charters of Resignation and of Confirmation from the Prince may be in the form *mutatis mutandis* of the Crown Writs, of which examples are there given.

The Testing Clause of the Crown Charters, both of Resignation and of Confirmation, whether granted by the Sovereign or the Prince, in which the reference to the Sealing occurs, is now expressed so as to be in conformity with the general directions in § 78, as to the Seal being dispensed with unless specially required by the Vassal. (l)

It should also be noticed, that by the Titles to Land Act of 1858, which for the first time allowed the Entry to be given by means of Writs of Resignation and of Confirmation engrossed upon the Conveyance, it was not made expressly necessary in such Writs to insert or refer to Conditions of Entail or Real Burdens affecting the Lands to which the Writ related; and in some quarters doubts were entertained as to the effect which the omission to insert or refer to such Conditions and Real Burdens might have in questions under the Law of Entail, or under Feu Contracts requiring real Burdens to be engrossed in all future investitures. In order to remove that doubt, a *proviso* has been introduced at the end of section 83 to the effect that in Crown Writs engrossed on a Conveyance, it shall not be necessary to insert or refer to the Destination of Heirs, or the Conditions of Entail, or the Real Burdens, &c., provided the same are inserted at full length, or referred to (in manner provided by the 9th and 10th Sections of the Act) in the Conveyance on which the Writ is engrossed.

(l) *Vide supra*, p. 115.

(23) *Forms of Crown Writs and Crown Charters generally.*

§ 83, besides providing for the Forms of Crown Writs and Crown Charters of Resignation and of Confirmation, provides that Crown Writs and Crown Charters of any other denomination or nature (except Crown Precepts or Crown Writs of *Clare Constat*), may be in the Forms as nearly approaching as may be to the Examples given in Schedule (T), the necessary alteration being made as the Denomination or the Nature of the particular Writ or Charter may require. The Schedules are so framed as to be easily adapted to the Crown Writs or Crown Charters of Adjudication or of Sale, or to Crown Charters of *Novodamus* or the like. And it is provided that Crown Writs or Charters, of whatever kind, granted in the form provided by the Act, are to have the same force and legal effect in all respects as if the same had been granted in any corresponding forms heretofore in use or competent, and are to be read and construed as largely and beneficially in all respects for the holders thereof as if the same had been expressed in and had contained the whole terms and words which were used prior to the passing of the Act, or prior to 1st October 1847, in granting Crown Writs or Charters.

(24) *Crown Precepts and Crown Writs of Clare Constat.*

Under the Law, as it existed prior to 1847, a party desiring to be entered by the Crown as heir of a former vassal was required, as a preliminary step, to expedite a Service as Heir in Special to his Ancestor; and on production of his Retour, he obtained a Precept from Chancery upon which he was infeft. The form of Precept prior to 1845 was long and cumbrous. It was directed to the Sheriff of the County in which the lands or some part thereof lay, and Fees were payable to the Sheriffs, in respect of the Infeftment which passed upon the Precept. The Act 8 and 9 Vict. c. 35, directed by § 6 (*m*) that the Precept should be directed to any Notary Public, and not to the Sheriff; but

(*m*) This Section is repealed by the present Act.

it did not give in any Schedule the Form of the Precept as thus altered. By the Act of 1847, however,⁽ⁿ⁾ a new and short form of Crown Precept was substituted for the old form; and it was made competent to grant the Precept on production either of a General Service or of a Special Service.

A great alteration and innovation in the mode of entering Heirs of Crown Vassals was made by the Titles to Land Act of 1858,^(o) which substituted for the Chancery Precept a Short Deed, termed a "Crown Writ of *Clare Constat*," which was simply a Statement by the Crown of the death of the Ancestor and the Title by which he was entered as Vassal in the Lands, with a recital of or reference to any Conditions of Entail or Real Burdens under which he held the same, and a statement of the Relationship to him of the Person demanding the Entry, and of the character in which the Entry is asked, and concluding with a Declaration that such Person is the heir entitled to succeed to the former vassal in the said Lands, to be holden of the Crown [*or Prince*]. There was no Precept of Sasine in the Writ.

These several enactments are consolidated in §§ 84 and 85 of the present Act, under which it is now competent for any person to obtain from the Crown [*or Prince*] either a Precept from Chancery^(p) or a Writ of *Clare Constat*, provided he produce, along with the last Crown Writ or other Titles requisite, either a Retour or Decree of Special Service in the particular lands for Infertment in which the Writ or Precept is sought, or a Retour or Decree of General Service, duly instructing the Propinquity of such Person to the Party who died last vest and seized in the lands, and the character of Heir otherwise belonging to him, and establishing his right to succeed to the lands. The Form of the Crown Writ of *Clare Constat* and of the Pre-

(n) 10 and 11 Vict. c. 51, §§ 18, 19, Schedule (B).

(o) 21 and 22 Vict. c. 76, § 11.

(p) It is only in exceptional circumstances that a *Precept* will hereafter be asked, as a *Writ of Clare Constat* is all that is likely to be needed in the general case.

cept from Chancery are respectively Nos. 1 and 2 of Schedule (U) annexed to the Act.^(g) The Form of the *Writ* there given is nearly in the form of Schedule (G) of the Titles to Land Act of 1858; but it will be seen that it is now necessary to set forth therein not only the Writs forming the last Investiture, but the dates thereof, and the dates of their Registration, both in the Register of Sasines and in the Register of Crown Writs.

The Crown Writ of *Clare Constat* or Precept from Chancery is to be prepared in the same manner and with the same formalities as any other Crown Writ; and, on being recorded in the Register of Sasines, with Warrant of Registration thereon, it is to have the same legal force and effect in all respects as if a Precept from Chancery in the old form had been granted and followed by Sasine.

It is provided, however, that before the Writ or Precept is delivered to the Vassal, Payment is to be made of the Amount of Duties and Composition payable to the Crown or Prince.

As it is provided by § 115 that all Crown Writs, &c., are to operate as a Confirmation of all Prior Titles required to complete the Title of the party obtaining the entry, it is unnecessary to combine with the Precept or Writ of *Clare Constat* a Charter of Confirmation, which was formerly required where the Ancestor had died infert in the Lands but without having been entered with the Crown.

It will also be observed from the Schedules that neither the Writ of *Clare Constat* nor the Precept from Chancery, nor Writs of Confirmation, or Resignation, require to be Sealed. All, however, are to be signed by the Director of Chancery, or his Depute or Substitute.

(25) *Crown Writs of Clare Constat and Precepts from Chancery to be null unless Recorded before first Term after being issued.*

§ 86 is a re-enactment of a Proviso of § 6 of 8 and 9

(g) See *Appendix*, p. 106. See also *infra*, pp. 143, 144, and Schedules there mentioned, as to Special Forms of Crown Writs of *Clare Constat* upon Forfeiture or Relinquishment of Superiorities.

Vict. c. 35. It declares that all Crown Writs of *Clare Constat* and Precepts from Chancery are to be null unless they are, with Warrant of Registration on behalf of the Heirs in whose favour they are granted, recorded in the appropriate Register of Sasines before the first Term of Whitsunday or Martinmas after the date of such Writ or Precept. This is a Statutory declaration of the conditional nullity which was set forth in the Old Precept of Chancery in the following terms

"presentibus post proximum terminum minime valituris,"

and its object is to prevent the Crown from being prejudiced by a party entered as Heir lying out uninfest, and so depriving the Crown of the Non-Entry Duties, which would otherwise be payable. The Writ or Precept, when Granted by the Prince, will be in the forms above specified *mutatis mutandis*,^(r) and certain Fees provided by the said Act 8 and 9 Vict. c. 35, § 6, are for a limited period to be Paid to Sheriffs and other officials who were appointed to their respective offices before 1st October 1845.

(26) *Register of Crown Writs.*

§ 87 re-enacts and consolidates 10 and 11 Vict. c. 51, § 20, and 21 and 22 Vict. c. 76, §§ 6, 8, and provides that the Director of Chancery, or his Depute or Substitute, shall record in "The Register of Crown Writs" every Crown Writ at full length, and where the Writ is engrossed on a Deed or Conveyance there is to be entered in the Register, in addition to the Writ itself, the leading Name or Names, or other Distinctive Description, of the Lands contained in the Deed or Conveyance on which the Writ is engrossed, or of such of those lands as the Writ applies to, and the Date of, or of Recording,^(s) the Deed or Conveyance, and, if recorded, the Register in which the same is recorded. This provision is an improvement upon the Titles Act of 1858 which contained no provision for Recording at full length

(r) See General note to Schedule (U), *Appendix*, p. 108.

(s) This refers to the *Recording* in the Register of Sasines—not in the Register of Crown Writs.

a Writ engrossed upon a Conveyance—the Act apparently contemplating that a Short Abstract of the Writ should be prepared by the Presenter of Signatures, and recorded in the Register of Crown Writs. This, however, was in practice found to be so difficult and inconvenient that the whole Crown Writ, instead of an Abstract of it, was generally recorded in the Register of Crown-Writs; and in order to remove any doubt (for which, however, we confess we are unable to see any ground) as to the validity of a Crown Writ indorsed upon a Deed or Conveyance where the Whole of such Writ, instead of an Abstract thereof, had been recorded in the Register of Crown Writs, a proviso has been added to this section to the effect,

“that no Crown Writ entered in the Register of Crown Writs before the Commencement of this Act shall be held to be invalidly entered in such Register, although the whole of such Writ has been so entered, anything in the ‘Titles to Land (Scotland) Act 1858’ notwithstanding.”

Extracts from the Register of Crown Writs certified by the Director of Chancery, or his Depute or Substitute, are in all cases to make faith in judgment, except in cases of Improbation.

(27) *Crown Charter or Writ of Novodamus.*

§ 88 re-enacts, with some alterations and additions, 10 and 11 Vict. c. 51, § 22, and provides that where any Crown Charter or Writ (*t*) of *Novodamus*, or any Crown Charter or Writ containing any New or Original Grant, is to be sought, the prior Consent and Approbation of the Commissioners of Her Majesty's Woods and Forests and Land Revenues, or any one of them, and of the Commissioners of the Board of Trade, (*u*) under the hand of their Secretary for the time, must be obtained, and the Evidence

(*t*) It is not thought that Crown Grants of *Novodamus* will, in Practice, be given, except in the Form of a Separate Charter.

(*u*) The Consent of the Board of Trade is now for the first time required to such Grants.

of such consent must be produced to the Presenter of Signatures, and the Charter or Writ, when revised and engrossed, is to be lodged with the Queen's and Lord Treasurer's Remembrancer, to be by him transmitted for the Sign Manual of Her Majesty and the Signatures of the Commissioners of Her Majesty's Treasury, or any Two (v) of them, or where the lands are held of the Prince, if of full age, the consent and approbation of the Prince under his Sign Manual is to be obtained. The Charter or Writ will be prepared, signed, and, if required, sealed in the same manner as Crown Writs generally.

(28) *All Crown Writs to be in the English Language.*

§ 90 re-enacts the important provision of 10 and 11 Vict. c. 51, § 25, and directs that all Crown Writs and Instruments following thereon, or relating thereto, shall be expressed in the English Language, in place of the Latin Language, which before 1847 was usually employed in such Documents.

(29) *Court of Session to frame Regulations.*

§ 91 re-enacts 10 and 11 Vict. c. 51, § 28, and authorises and requires the Court of Session, acting as the Court of Exchequer, to make Rules and Regulations for carrying the present Act into effect, in so far as relates to Entries with the Crown, and for determining the Fees and the various steps of procedure. (x)

(30) *Salary of Presenter of Signatures to be regulated by the Commissioner of the Treasury when a Vacancy arises.*

This is provided for by § 92, which re-enacts 10 and 11 Vict. c. 51, § 31.

(v) Under the Act 10 and 11 Vict. c. 51, § 22, the number was *Three*.

(x) In pursuance of the Act 8 and 9 Vict. c. 35, § 6, now repealed, the Court of Session passed an Act of Sederunt, dated 3d July 1846, 'for Regulating the Fees payable to Sheriffs, Sheriffs-Substitute, and Sheriff-

- (31) *Power to Prince and Steward of Scotland to appoint his own Presenter of Signatures and other Officers of Exchequer and Chancery.*

This is regulated by § 93, which re-enacts 10 and 11 Vict. c. 51, § 34.

- (32) *Compensations already awarded under 10 and 11 Vict. c. 51, § 32, not to be affected.*

This is enacted by § 94, and the source from which such Compensation is to be paid is stated in § 95, which re-enacts 10 and 11 Vict. c. 51, § 33.

- (33) *Substitute to be appointed to Sheriff of Chancery or Presenter of Signatures in the event of Absence or Disability.*

§ 96 is a new Enactment, and comes in place of 10 and 11 Vict. c. 47, § 30, and 10 and 11 Vict. c. 51, § 29, which provided that the Sheriff of Chancery and the Presenter of Signatures should each, when authorised and required by the Lord Justice-General and President of the Court of Session, discharge the duties of the other. The present Act does not re-enact these provisions, but by § 96 provides that

“in the Event of the temporary Absence or Disability of the Sheriff of Chancery or of the Presenter of Signatures, it shall be competent to the Lord Justice-General and President of the Court of Session to appoint a properly qualified Person to act as Substitute to the Sheriff of Chancery or to the Presenter of Signatures, as the case may be, such person receiving from the Sheriff of Chancery, or from the Presenter of Signatures, as the case may be, such Remuneration for so acting as shall be fixed by the Lord Justice-General and President of the Court of Session.”

‘ Clerks,’ under that Statute. In terms of § 162 of the present Act, that Act of Sederunt will remain in force until the Court shall pass a New Act of Sederunt under this Act.

II.—ENTRY WITH SUBJECT-SUPERIOR.

1. *Entry by Resignation.*

A party holding a Conveyance of Lands, with a Procuratory or Clause of Resignation granted by a former Vassal duly entered with the Superior and infeft, or whose Title admitted of being made public by Confirmation, is entitled to demand from the Superior an Entry by Resignation. If the Resignation is refused, the Vassal may, under the provisions of the Act 20 Geo. II. c. 20, § 12, charge the Superior to accept the Resignation within fifteen days, and Enter him as Vassal on the tender of a Year's Rent and Arrears of Feu-duty; and he may then proceed against the Superior as on an Obligation *ad factum præstandum*, or he may refer to the next Superior, and so on up to the Crown, who refuses no Vassal.

In the general case the Superior voluntarily accepts the Resignation, which was at one time in use to be made by means of an "Instrument of Resignation *in favorem*," in Execution of the Procuratory of Resignation granted by the former Vassal. In practice, however, the Instrument had for many years prior to 1845 been seldom used, and the Superior, on production of the Procuratory, granted to the Vassal a Charter of Resignation, containing a Precept of Sasine, on which the Vassal might obtain Infeftment by expeding and recording an Instrument of Sasine. The Instrument of Resignation was, as we have mentioned, (y) abolished by the Infeftment Act of that year; (z) and in 1847 the Lands Transference Act (a) substituted for the Procuratory a short "Clause of Resignation," which has been re-enacted by the Present Act, (b) and which entitles the Vassal to demand Entry by Resignation as effectually as if his Conveyance contained a Procuratory. The Entry continued to be given by a Charter of Resignation until 1858, when a New Mode of Entry by "Writ of Resigna-

(y) *Vide supra*, p. 115, note (e).

(z) 8 and 9 Vict. c. 35, § 9.

(a) 10 and 11 Vict. c. 48, § 1.

(b) The Act, § 5.

tion" was introduced by the Titles to Land Act of that year.(c)

(1) *Writ of Resignation.*

The Writ of Resignation, as so introduced, contained the substance of the old Charter in a greatly abbreviated form, and was indorsed upon the Conveyance containing the Procuratory or Clause of Resignation. The present Act(d) re-enacts the provisions of the Act of 1858 regarding this mode of entry, and declares, *inter alia*, that the Superior shall be bound to grant a Writ of Resignation in place of a Charter of Resignation, should the Vassal entitled to demand the Entry prefer that form. The Act contains in Schedule (V), Nos. 3, 4,(e) the Form both of a Writ and of a Charter of Resignation from a Subject-Superior,—in this respect differing from the Act of 1858, which contained no separate forms of these Deeds, it being left to the Conveyancer to frame them upon the Model of the corresponding Crown Writ contained in that Act. The Writ of Resignation, as exemplified in Schedule (V) of the present Act, is substantially the same as the Writ of Resignation introduced by the Act of 1858, with this difference, that the Name of the last entered Vassal and the Charter or other Writ by which he was entered and infeft are required to be set forth in the Writ.

The party requiring the Writ must not only be entitled to demand an Entry by Resignation,(f) but he must, if required, produce to the Superior a Charter or other Writ showing the *Tenendas* and *Reddendo* of the Lands resigned, and at the same time pay or tender to the Superior such Duties or Casualties as he may be entitled to demand.

The Writ of Resignation being indorsed upon the Con-

(c) 21 and 22 Vict. c. 76, § 9.

(d) The Act, § 99.

(e) See *Appendix*, p. 109. See also *infra*, pp. 143, 144, and Schedules there mentioned, as to Special Forms of Writ of Resignation upon Forfeiture or Relinquishment of Superiorities.

(f) The party must be in a position which would entitle him to charge the Superior to enter him under the Act of 20 Geo. II., as above explained, p. 127.

veyance, may, along with the Conveyance, and with a Warrant of Registration, also written thereon, be recorded in the appropriate Register of Sasines, which Registration is to have the same legal force and effect in all respects as if a Charter of Resignation had been granted and followed by an Instrument of Sasine duly expedite and recorded at the date of recording the said Conveyance and Writ, according to the law and practice prior to 1st October 1858, in favour of the party on whose behalf the Conveyance and Writ are presented for Registration.

In order that the recording of the Conveyance along with the Writ of Resignation may not be held to create a Mid-Superiority,^(g) it is provided that such simultaneous Registration

“shall not have the effect of an Instrument of Sasine following on such Conveyance.”

Where the Lands contained in the Conveyance are held under a Deed of Entail, or under Real Burdens, &c., it is^(h) not necessary, in the Writ of Resignation indorsed thereon, to insert or refer to the Destination of Heirs, or the Conditions of Entail, or the Real Burdens, &c., provided the same are duly inserted in the Conveyance, or are therein referred to in the manner provided by the 9th or 10th Sections of the present Act.

(2) *Charter of Resignation.*

The Charter of Resignation, although in a great measure superseded by the Writ, has not been abolished, and cases may frequently occur in which entry in this form may be preferred. The present Act,⁽ⁱ⁾ supplying an omission in the Act of 1858, gives a short form of such a Charter, which may, in the option of the vassal, be demanded by him from the Superior in place of either a Writ of Resignation, or a Charter of Resignation in the form in use prior to 1858,

(g) See Remarks on this subject upon the Registration of the Crown Writ of Resignation, *supra*, p. 116.

(h) The Act, § 100.

(i) The Act, Schedule (V), No. 4. See Appendix, p. 109.

provided that he be entitled (*j*) to demand an Entry by Resignation, and shall, if required, produce to the Superior a previous Charter or Writ showing the *tenendas* and *red-dendo*, and shall also pay or tender to the Superior the Duties or Casualties which may have become payable. This Charter, or a Notarial Instrument following thereon, may, with a Warrant of Registration on the Charter or Instrument, be recorded, like an Ordinary Conveyance, in the Appropriate Register of Sasines, and the same on being so recorded is to have the effect of infefting the Vassal in the Lands as fully as if he had expedite and recorded an Instrument of Sasine upon a Charter of Resignation according to the law and practice prior to 1st October 1858. (*k*)

2. Entry by Confirmation.

Before 1847 Confirmation was obtained by the Vassal presenting his own Infeftment and the prior Titles of the Lands to the Superior, and obtaining from him a Charter confirming the Lands and that Infeftment, and the Disposition on which the same proceeded, and also confirming *nominatim et seriatim* all the prior Dispositions and Sasines, if any, up to the last Charter granted by the Superior. The Vassal, however, could not compel the Superior to grant an Entry by Confirmation, so that if he did not hold a Procuratory of Resignation, or if he did not happen to be in a position to obtain a Decree of Adjudication in Implement against his author, which would contain a Warrant to Charge the Superior, he could not compel the Superior to give him an Entry at all. To meet such a case, the Act of 1847 provided, (*l*) that where a person was infeft in lands holden of a Subject-Superior upon a Dis-

(*j*) *Vide supra*, p. 127.

(*k*) *Vide supra*, pp. 39 and 49. The Charter of Resignation, as well as the Conveyance with the Writ of Resignation indorsed thereon, may also, like an ordinary Conveyance, be assigned before being recorded, in which case the Title of the Assignee will be completed in the manner pointed out above for the completion of the Title of an Assignee to an Unrecorded Conveyance.—*Vide supra*, p. 53, *et seq.*

(*l*) 10 and 11 Vict., c. 48, § 6.

position granted by the person last entered and infeft, or granted by a person whose own Title to such Lands was capable of being made public by Confirmation, according to the then existing law and practice,—which Disposition should contain an Obligation to Infeft *a me* or *a me vel de me*,—or where such person was Infeft upon a Decree of Special Service, or upon a Decree of Adjudication or of Sale containing a Warrant of Infeftment in terms of that Act, it should be competent for such person (upon production to the Lord Ordinary on the Bills in the Court of Session of his Sasine in the said Lands and Warrants of the same, and upon showing the Terms and Conditions under which the Lands were held of the Superior) to obtain Warrant for Letters of Horning, to charge the Superior to Grant in his favour a Charter of Confirmation, in the same way and form as was provided and in use for compelling Entry by Resignation; *(m)* provided always that the Charger should at the same time pay or tender to the Superior such Duties or Casualties as the Superior might be entitled to demand for an Entry. The Superior might, on good cause shown, suspend the Charge in the Bill Chamber; and if compelled to grant the Charter, he was to be entitled therein to insert the Clauses of *Tenendas* and *Reddendo* contained in the former Charters of the Lands, and all other Clauses and Conditions contained therein, in so far as the same were usual and necessary, and were not set forth in such Instrument of Sasine, or duly referred to in terms of the said Act, or of the Service of Heirs Act of 1847; but it was also provided that, if the said Clauses and Conditions were so inserted or duly referred to in the Instrument of Sasine, the same should not be repeated in the Charter without the Vassal's consent.

The present Act *(n)* substantially re-enacts the foregoing provisions. It is right, however, to notice that the present Act differs somewhat from the previous Act in the description which it gives of the kind of Title which a party desiring Entry must possess before he can avail him-

(m) *Vide supra*. p. 127.

(n) The Act, §§ 97 and 100.

self of the Compulsory Powers of the Act. Such person must be

“infest in Lands holden of a Subject-Superior upon a Conveyance or Deed of or relating to such Lands granted by or derived from the Person last entered with the Superior and infest, or granted by or derived from a Person whose own Title to such Lands is capable of being made public by Confirmation according to the existing law and practice, which Conveyance or Deed shall contain an Obligation to infest *a me* or *a me vel de me* or shall contain a Clause expressing the Manner of Holding to be *a me vel de me*, or shall imply that the Manner of Holding is *a me vel de me*, or upon any Conveyance or Deed which under this Act or any of the Repealed Acts, shall be equivalent to or have the effect of such Conveyance.”

The intention here plainly is, to confer the compulsory powers of this section upon persons infest on a Conveyance with an *a me* holding, or with an *a me vel de me* holding, provided the holding be therein set forth in a Clause of Obligation to Infest,—or be expressed or implied within the meaning of § 6 of this Act. If the Conveyance contains an *Obligation to infest a me*, or *a me vel de me*, the person infest thereon will undoubtedly be entitled to exercise the powers of this section; but, owing to the accidental omission of the words “*a me* or” before the words “*a me vel de me*,” &c., in describing the Manner of Holding, where that is expressed or implied in the sense of § 6, it will be seen that the present section, as it stands, does not *in terminis* apply to the case of a party infest upon a Conveyance expressing or implying the manner of holding to be *a me* only. Our own impression is that a party so infest would be entitled to avail himself of the compulsory powers of this section, and to maintain that, as his Title contains or implies an *a me* holding, the Superior cannot object that it does not also contain an alternative *de me* holding. The difficulty can arise only in the case of a party infest on a Disposition *expressing* the Manner of Holding to be *a me* only,—for in the case of Conveyances expressing no Manner of Holding, and of Decrees of Service or Adjudication or Sale, which stand in the same position, the Manner of Holding implied is *a me* or *a me*

vel de me according as the Titles prohibit or do not prohibit Subinfeudation or Alternative Holding ; and, even where there are such Prohibitions, *the Conveyance is to imply the Manner of Holding to be a me vel de me for twelve months* after the date of the Conveyance, provided the Vassal enters with the Superior during that period.(o) The Vassal therefore, where no Manner of Holding is expressed, or where he has been infeft on a Decree of Service, Adjudication, or Sale, may obviate all question by applying within the twelve months for an Entry, which in that case the Superior would, we think, be bound to grant in terms of this section, read in connection with § 6. The difficulty, if there be really any, may, however, be effectually obviated by inserting in every Conveyance of Lands where the Feu Right prohibits alternative Holding, or where the Holding is to be *a me* only,—as in the case of a Conveyance of a Superiority,—an Obligation to Infeft *a me* only, which in that case will be in the old form.—(*Note (i), Supra, p. 21.*) It is not likely, indeed, that any serious practical inconvenience will arise from the omission even in a case where the Holding is expressed to be *a me* only, because in such cases the Superior is generally only too anxious to compel his Vassal to enter. The omission, however, is one which it would be well to supply in some future Act.

Under this provision (subject to the qualification now referred to) any person infeft on a Conveyance granted by a party publicly infeft, or whose title admitted of being made public by Confirmation, or upon any Decree of Special Service, Adjudication, or Sale, is in a position to compel entry by Confirmation ; and if the Superior does not obey the Charge, or suspends and fails in his Suspension, the Vassal will proceed in the manner pointed out (*supra*, p. 127) in the Case of Compulsory Entry by Resignation.

(1) *Writ of Confirmation.*

Prior to 1847 the Charter of Confirmation contained

(o) The Act, § 6, *Vide Supra* p. 23.

a description of the Lands, and an enumeration and deduction of all the Titles between the last Charter and the Infestment sought to be confirmed. A somewhat shorter form was introduced by the Lands Tranference Act of 1847 (*p*) which enacted that Confirmation of the Lands and of the Vassal's Infestment should be held to confirm, without specifying them, all the prior Titles requiring to be confirmed in order to complete the Vassal's Investiture. But still a separate *Charter* of Confirmation was necessary. The Titles to Land Act 1858 (*q*) made it competent for the Superior to grant Confirmation either by Writ of Confirmation indorsed upon the recorded Conveyance or Instrument constituting the Vassal's Infestment, or, in the option of the Vassal, by a Charter of Confirmation, and the Superior was declared to be bound to Grant an Entry by Confirmation in one or other of those modes, provided the party was in a position to compel (*r*) entry by Confirmation. These provisions have been re-enacted by §§ 97 and 98 of the present Act.

The Form of the *Writ* of Confirmation to be engrossed upon the Conveyance or Instrument is given in Schedule (V), No. 1. (*s*) The person asking the Writ must not only be the party entitled to demand an Entry, but he must, if required, produce to the Superior a Charter or other Writ showing the *Tenendas* and *Reddendo* of the Lands; and he must at the same time pay or tender to the Superior such Duties or Casualties as the latter may be entitled to demand. The Superior, however, is not entitled to insert in the Writ any of the Clauses, Burdens, and Conditions, &c., contained in the former Charters, except in so far as these are not inserted at full length, or referred to in terms of the Act, or of any of the repealed Acts, in the Conveyance or Instrument Confirmed; and a similar provision is made

(*p*) 10 and 11 Vict., c. 48, § 7, and Schedule D.

(*q*) 21 and 22 Vict. c. 76, § 7.

(*r*) *Vide supra*, p. 131.

(*s*) See *Appendix*, p. 108. See also *infra*, pp. 143 and 144, and Schedules there mentioned, as to Special Form of Writ of Confirmation upon Forfeiture or Relinquishment of Superiorities.

in § 100 as to the insertion of a reference to the Destination and Conditions of Entail, and to Real Burdens affecting the Lands contained in the Deed or Instrument to be confirmed.(t)

(2) *Charter of Confirmation.*

We have already (*supra*, p. 133) explained the improvement upon the old form of the Charter of Confirmation introduced by the Lands Transference Act of 1847. The present Act gives, in Schedule (V), No. 2, the Form of such a Charter adapted to the present Law and Practice.(u) To entitle a person to demand such a Charter he must be in the same position as we have already shown a person must hold who demands an Entry by Writ of Confirmation.(v) Such Writs and Charters of Confirmation are declared to be equivalent to the Charter of Confirmation in the longer form previously in use.

(3) *Charter of Resignation and Confirmation no longer necessary where the Grantor of a Procuratory or Clause of Resignation was not publicly infest.*

It has been already stated that, by § 115, every Writ and Charter from Subject-Superiors, of whatever description, shall operate a Confirmation of the whole prior Deeds and Conveyances necessary to be confirmed in order to complete the Investiture of the person obtaining such Writ or Charter. This enactment not only dispenses (as had been done by the Lands Transference Act of 1847—*vide supra*, p. 133) with the necessity of enumerating in every Charter of Confirmation, the whole Deeds and Instruments between the Deed confirmed and the last Charter from the Superior, but it also (as had been done by the Titles to Land Act 1860, § 39), in the case of Charters of Resignation, Adjudication, and Sale, renders unnecessary the Combination of a Charter of Confirmation

(t) The Act, §§ 98 and 100; and see *Appendix*, p. 108.

(u) See *Appendix* p. 108.

(v) *Vide supra*, pp. 131 and 134.

with a Charter of Resignation, which was required where the Grantor of the Procuratory or Clause of Resignation, although himself infeft, had not been entered with the Superior.

3. *Entry by Writ or Precept of Clare Constat.*

We have hitherto been dealing with the entry of Singular Successors, or of parties who have been served Heirs in Special to a deceased ancestor and have been infeft on their service, and are in a position to compel the Superior to enter them by Resignation or Confirmation, as the case may be. In many cases, however, a Superior is willing to grant Entry to an Heir of a deceased Vassal without requiring previous Service. Under the old law and practice the Deed by which this was done was termed a Precept of *Clare Constat*, which was a Declaration by the Superior setting forth the Death of the last Vassal, and that by authentic Instruments it appeared that the party asking an entry was the Heir of that Vassal, and concluding with a Precept of Sasine in favour of the Heir. Where the ancestor had not been himself entered with the Superior, although infeft base in the Lands, the Precept of *Clare Constat* was combined with a Charter of Confirmation of that base Infestment. So the law stood until 1858, when the Titles to Land Act of that year (*w*) introduced a new form for entering Heirs by a *Writ* of *Clare Constat* similar to the Crown *Writ* of *Clare Constat*, which has already been fully described. (*x*)

The provisions of the Act of 1858 regarding that *Writ* have been substantially re-enacted by the present Act. (*y*) It should be here observed, that Precepts of *Clare Constat* in the old form are not abolished. On the contrary, it is still made competent to use them, and a form of the Precept is given in Schedule (W), No. 2. (*z*) The *Precept*, however, will not be much if at all used, and in future it is by the *Writ* of *Clare Constat* that entry will

(*w*) 21 and 22 Vict. c. 76, § 11.

(*z*) *Vide supra*, p. 121.

(*y*) The Act, § 101.

(*z*) See *Appendix*, p. 111.

be generally given to Heirs by Subject-Superiors. That is to be in the form of Schedule (W), No. 1,(a) which may be used in all cases

“ in which it is or may be competent to Grant Precepts of *Clare Constat*, or Precepts of *Clare Constat* and Charters of Confirmation combined.”(b)

The Writ of *Clare Constat*, or the Precept of *Clare Constat*, or the Precept of *Clare Constat* and Charter of Confirmation combined—in each case with a Warrant of Registration thereon—may be recorded in the Register of Sasines, and on being so recorded, the Heir will be Infert as effectually as if at the date of Recording the Writ or Precept, &c., he had been infert by Sasine upon a Precept of *Clare Constat*, &c., according to the practice prior to 1858.

The same Section provides that Subject-Superiors shall be bound to Grant such Writ of *Clare Constat*, if required by the Heir entitled to demand the same, provided the Heir shall produce a prior Charter or Writ showing the *Tenendas* and *Reddendo* of the lands, and shall also pay or tender to the Superior such Duties or Casualties as he may be entitled to demand. By the Titles to Land Act 1858, § 11, it was provided that, where the Superior required it, the Heir should produce a Decree of General or of Special Service, establishing his right to succeed to the lands. It was unnecessary to insert these words in the present Act, because, as the exhibition of the Service was required only to satisfy the Superior of the Right of the Vassal to succeed, and as the Heir, if he has been served Heir in Special, may avail himself of the Compulsory powers of the 20 Geo. II. c. 50, whereby, on production of his Special Service, he can charge the Superior to give him entry by Precept of Sasine, it is not likely that a Superior will refuse to

(a) See *Appendix*, p. 110. See also pp. 143 and 144, and Schedules there mentioned, as to Special Forms of Writ of *Clare Constat* upon Forfeiture or Relinquishment of Superiorities.

(b) The implied Confirmation of all prior Titles enacted by § 115, renders it unnecessary to combine a Charter of Confirmation with the Writ or Precept of *Clare Constat*.

enter the Heir by Writ. Should he do so, the Heir's remedy is either to Charge the Superior, under the Act of Geo. II., to enter him by Precept, or to record his decree of Special Service in the Register of Sasines, and charge the Superior under § 97 of this Act to enter him by Confirmation.(c)

Writ of Clare Constat in Burgage Subjects.

By the Act of 1860 (d) it was for the first time made competent for the Heir of a party who had died infest in Burgage Subjects to obtain from the Magistrates of the Burgh in which the Lands were situated an Entry by Writ of *Clare Constat*. Before that Act was passed an Heir could be entered in such a case only by the form known as Cognition, followed by an Instrument of Cognition and Sasine, and recorded in the Burgh Register of Sasines. The Writ of *Clare Constat*, introduced by the Act of 1860, is re-enacted by the present Act, § 102, and the Form will be found in Schedule (W), No. 3.(e) The form of this Writ of *Clare Constat* given in the present Act is more precise than that given in the former Act, and the granting of the Writ is facilitated by the new provision, that

“such Writ of *Clare Constat* may be signed by the Provost or Acting Chief Magistrate for the time, and by the Town-Clerk, or, where there are more than one Town-Clerk, by One of the Town-Clerks, and when so signed shall be as valid as if signed by the whole of the Magistrates.”

This is a considerable improvement upon the former practice, which required the Provost and the Bailies, or a Quorum thereof, to sign the Writ. The Writ of *Clare Constat*, on being recorded in the Burgh Register of Sasines, is to have the full Effect of Cognition and Sasine under the old practice.

Writ and Precept of Clare Constat available to infest the Heir after the death of the Grantor thereof.

Precepts of *Clare Constat* having been excepted from

(c) *Vide supra*, p. 131.

(e) See *Appendix*, p. 112.

(d) 23 and 24 Vict. c. 143, § 7.

the Act 1693, c. 35, became void by the death of the Grantor or Grantee. The present Act (§ 103) re-enacts 10 and 11 Vict. c. 48, § 15, and declares that

“ All Writs and Precepts of *Clare Constat*, whether from Subject-Superiors or from Magistrates of a Burgh, already made and granted, and still subsisting and in force, and all such Writs and Precepts of *Clare Constat* to be made and granted hereafter, shall, notwithstanding the Death of the Grantor thereof, remain in full force and effect during the whole Lifetime of the Grantee, and shall continue effectual as a Warrant for giving Infestment to the Grantee personally by Sasine in terms thereof, or by recording the same, with Warrant of Registration thereon in his favour, at any Time during the Grantee's Life.”

Writs and Precepts of *Clare Constat* vest in the Grantee no right to the Lands transmissible to his Heirs or Assignees if he shall die without having been infest thereon. In this respect the effect of the Writ and Precept is different from that of a Decree of Special Service, which, as we have seen, now vests in the Heir Served a Personal and transmissible Right to the Lands, even in the case of his dying uninfest. (*Vide supra*, p. 91.)

4. General Form of Writs and Charters from Subject-Superiors.

All Writs and Charters from a Subject-Superior of any Denomination or Nature (other than Writs or Precepts of *Clare Constat*) may (§ 100) be in forms as nearly approaching as may be and as the Nature of the Writ or Charter will admit to the examples given in Schedule (V), the necessary alterations being made as the Denomination or Nature of the particular Writ or Charter may require. It will therefore be easy to adapt Charters of *Novodamus* and Charters and Writs of *Adjudication* and *Sale* to the forms already given. Charters of *Adjudication* and Charters of *Sale* will, however, for the future be little used, as the party in right of the Decree on which such Charters are usually granted will, it is thought, generally record his Decree in the Register of Sasines, and then obtain a Confir-

mation thereof from the Superior, either voluntarily or under the compulsory powers of § 97.

All such Writs and Charters granted in the forms introduced by the present Act, or as nearly as may be in these forms, are, by the same Section (§ 100), to have the “same force and legal effect in all respects as if the same had been granted in any corresponding Forms heretofore in use or competent, and shall be read and construed as largely and beneficially in all respects for the Holders thereof, as if the same had been expressed in and had contained the whole Terms and Words which are now used, or which were used, in granting such Writs or Charters prior to the passing of the Statutes repealed by this Act.”

Tenendas and Reddendo may be referred to in place of being inserted at length in Writs and Charters.

A further useful provision of § 100 is, that in granting all Writs or Charters by Subject-Superiors (including Writs and Precepts of *Clare Constat*), it shall be competent and sufficient to refer to the *Tenendas* and *Reddendo* of the Lands therein contained as set forth at length either in the Writ or the Charter produced to the Superior in terms of this Act or in any Charter or other Writ recorded in any Public Register, and the Subject-Superior is to be bound, if required, to grant such Writs and Charters containing such reference in like manner as he was bound to grant similar Charters according to the forms in use prior to 1st October 1858. The meaning of this enactment is, that in all cases in which prior to 1858 Superiors might have been compelled to grant Charters containing the *Tenendas* and *Reddendo* at length, they may now be compelled to grant Writs and Charters containing merely a Reference to these Clauses as set forth in some prior Writ or Charter.

5. Forfeiture or Relinquishment of Superiority.

According to the law of Scotland a Superior whose own Title is incomplete cannot grant an effectual entry to his Vassal. In such a case the Vassal is entitled to charge the Superior under the Act 1474, c. 57, to enter

with *his* Superior within forty days, under certification that if he failed he should

“tyne the Tennent for his life-time, and assyth the partie of his Coastes and Skaithes that sall be sustained throw him in default of his Entrie,”

and on the expiration of the Charge the Vassal may apply to the next Over-Superior for an Entry. Before obtaining a Charter, however, it is necessary to procure a Decree of Declarator of the Tinsel of the Superiority against the Recusant Superior.

A shorter and simpler method of enforcing an Entry under such circumstances was introduced by the Lands Transference Act of 1847, and practically superseded the tedious and expensive proceedings above described. (*f*) The provisions of that Act have been re-enacted by §§ 104, 105, 106, 107, 108, and 109 of the present Act. It is unnecessary to enter into much detail as to the provisions of these Sections, which fully explain themselves, and which will be found in the *Appendix*, p. 54, *et seq.* A few remarks on the subject may not, however, be out of place.

(1) *Forfeiture where the Reddendo is under £5 in value.*

Where the Superior's Feudal Title is incomplete, and where a Party desiring an Entry would, if the Superior had been infeft in the Superiority, have been entitled to compel Entry in virtue of this Act (*i.e.*, under § 97, *supra*, p. 13), or of the Act 20 Geo. II. c. 50, or otherwise, the party desiring the Entry may, (*g*) where the annual *Reddendo* attached to the Superiority does not exceed £5 sterling in value, present an Application to the Lord Ordinary on the Bills in the form of No. 1 of Schedule (X), (*h*) praying for Warrant of Service on the Superior and for Decree ordaining the Superior within Thirty days of the date of such Service, or within Sixty days if he is in Orkney or Shetland or furth of Scotland, to procure himself entered and infeft, and to enter the Vassal on Payment of the

(*f*) 10 and 11 Vict. c. 48, § 8, and following Sections.

(*g*) The Act, § 104.

(*h*) See *Appendix*, p. 112.

Duties and Casualties, or to shew Cause for delaying or refusing so to do, with Certification that if he fail he shall forfeit all Right in the Superiority. The Order by the Lord Ordinary is to be in the form of No. 2 of Schedule (X), and if it be not duly complied with, or if the Superior shall not shew reasonable Cause for his delay or refusal, the Lord Ordinary is to pronounce a Decree in the form No. 3 of Schedule (X), finding and declaring that the Superior *has forfeited all Right to the Superiority*, and that the Vassal and his Heirs and Successors are entitled to hold the Lands in all time coming of and under the next Over-Superior by the Tenure and for the *Reddendo* by and for which the Forfeited Superiority was held, and is to grant Warrant to the Vassal to obtain Entry in the Lands from the Over-Superior in these Terms, and is to authorise the Decree, when extracted, to be recorded in the Register of Sasines.

Such Decree absolutely extinguishes the Mid-Superiority, and enables the Vassal to apply to the Over-Superior as his Immediate Superior for an Entry accordingly with the same *Tenendas* and *Reddendo* as were contained in the Title-deeds of the forfeited Superiority, and the Lands are thenceforth to be held of the former Over-Superior and his Successors, according to the Tenure of the forfeited Superiority in all time thereafter.

The Writ—which is termed a “Writ of Confirmation,” or of “Resignation,” or of “*Clare Constat*,” as the case may be—by which the Over-Superior is to enter the Vassal, is to be in one or other of the Forms of Schedule (AA).⁽ⁱ⁾

- (2) *Forfeiture where the Reddendo exceeds £5, or in the option of the Vassal whether it exceeds £5 or not.*

Where the annual *Reddendo* exceeds £5, or in the option of the Vassal whether it exceeds £5 or not, the Vassal may (j) present a Petition to the Lord Ordinary in the form

(i) See *Appendix*, p. 119.

(j) The Act, § 105.

No. 1 of Schedule (Y), (*k*) for Forfeiture of the Superiority, the Certification in which is, that the Superior shall forfeit—not the Superiority itself—but merely the Casualties and Duties payable on the entry of the Vassal who is to be entitled to retain the same until fully satisfied for all the Expenses of the Petition, procedure thereon, and of his completing his title in terms of the Act. On the Expiration of the *Induciae*, unless the Superior shall assign reasonable cause for his delay or refusal, the Lord Ordinary is to pronounce decree in the form of No. 3 of Schedule (Y), granting Interim Warrant to the Vassal for obtaining an entry with the Crown, or in his option from the Mediate Over-Superior, as acting in the Vice of the Immediate Superior, and granting Warrant for Letters of Horning to charge the Mediate Over-Superior to give the Vassal such entry. The Lands are to be held of the Crown or Mediate Over Superior as in the Vice of the unentered Immediate Superior only so long as he and his Successors shall remain unentered, and thereafter until a new Entry in favour of the Vassal or his Successors (*l*) shall become requisite. If the Vassal enters with the Crown as in the Vice of the Immediate Superior, he is to follow the procedure already pointed out for obtaining a Crown Writ. (*Supra*, p. 108, *et seq.*) He is to lodge with the Presenter of Signatures the Extract Decree, and a Draft of the proposed Crown Writ, with a short Note in terms of the Act; and such Writ, for which the Extract Decree is to be a sufficient Warrant, is to be in one or other of the forms given in Schedule (Z) annexed to the Act. (*m*)

The Expenses of the Petition are to be decerned for by the Lord Ordinary in the form of No. 4 of Schedule (Y).

(3) *Judicial Relinquishment of Superiority, whether Redendo is below or above £5.*

Where a petition for Forfeiture is presented against a Superior who has not completed his Feudal Title, and

(*k*) See *Appendix*, p. 114.

(*m*) See *Appendix*, pp. 117 and 118.

(*l*) The Act, § 106.

whether the annual *Reddendo* is above or below Five pounds, the Superior may, *(n)* at any time before the Interim decree is extracted, lodge a Minute *Relinquishing the Right of Superiority* in the form No. 1 of Schedule (BB). *(o)* If the Vassal accepts the Relinquishment, which he may do by indorsing on the Minute an Acceptance in the form No. 2 of Schedule (BB), the Lord Ordinary is, on the Vassal's Motion, to interpose his authority thereto, and declare the Right of Superiority to be Extinguished to the effect of making the Vassal hold the lands immediately of and under the Superior of the Relinquished Superiority *in permanency*, and by the Tenure and for the *Reddendo* by which the Relinquished Superiority was held. The decree is to be in the form No. 3 of Schedule (BB), and, when extracted and recorded in the Register of Sasines, is to entitle the Petitioner to apply to the Over-Superior for an entry, which is to be by Writ of Resignation or of Confirmation or *Clare Constat*, as the case may be, in one or other of the forms given in Schedule (AA); *(p)* but the Vassal is not bound to accept the Relinquishment: and he may refuse the same and complete his title by Entry from the Crown or the Mediate Over-Superior, as in the Vice of the Immediate Superior. The Investiture, thus completed by the Forfeiture or Relinquishment by the Heir-Apparent of the Superiority, is to have precisely the same effect as if the heir had completed his Titles to the Superiority, and conveyed the same to the Vassal, who thereafter had consolidated it with the Property by Resignation *ad remanentiam* in his own hands. It is provided, however, *(q)* that the title so completed is not to extend the Interest of the Over-Superior, who is to be entitled to no more than the Casualties, taxed or untaxed, to which he would have been entitled if the Apparent Heir of the Mid-Superiority had remained his Vassal.

It is provided by § 109 that, on the one hand, the Vas-

(n) The Act, § 107.

(o) See *Appendix*, p. 121.

(p) See *Appendix* p. 119.

(q) The Act, § 108.

sal who obtains or accepts from the Apparent Heir Forfeiture or Relinquishment of his Superiority, and makes up Titles thereto under the Over-Superior, is to be liable, subject to Retention of the Expenses, as already mentioned, for the Value of the Superiority to the Heir-Apparent, or any Person in his Right or having Interest, but only to the Extent of the Value or Price of the Forfeited or Relinquished Right; and, on the other hand, such Forfeiture or Relinquishment by the Apparent Heir is not to infer a Passive Representation on his part, nor any Liability for the Debts of the person last Infest in the Superiority, beyond the Price, if any, which he may receive for such Forfeiture or Relinquishment.

(4) *Voluntary Relinquishment of Superiority without Judicial Procedure; and Investiture by Over-Superior.*

The Provisions which we have noticed were all introduced by the Act 10 and 11 Vict. c. 48, but still further facilities were given for the *voluntary extinction* of Mid-Superiorities by the Act 21 and 22 Vict. c. 76, § 23, which is re-enacted in § 110 of the present Act, by which it is provided that a Superior, whether himself entered with his own Superior or not, and whatever the annual Value of the *Reddendo* may be, may relinquish the Superiority in favour of his Immediate Vassal by granting to him a Deed of Relinquishment in the form of No. 1 of Schedule (CC).^(r)

The Relinquishment is to be accepted by the Vassal in Writing on the Deed in the Form of No. 2 of Schedule (CC), and followed by a "Writ of Investiture" by the Over-Superior, which, by § 111, he is to be bound to grant, and which is also to be written upon the Deed in the Form of No. 3 of Schedule (CC)^(s) of the Act; and on the Deed, with the Acceptance and Writ of Investiture written thereon, and Warrant of Registration in behalf of the Vassal, also written thereon, being recorded in the

(r) See *Appendix*, p. 122.

(s) The Form in the Schedule is a Writ of Investiture by the Crown, but it can easily be adapted to a Writ of Investiture by a Subject-Superior.

Register of Sasines, the Superiority is to be held as extinguished and the Vassal is to come into the place of his Immediate Superior.

It is by § 110 declared that such Relinquishment by an unentered Superior shall not infer Passive Representation on his part, or Liability for the Debts of the person last infeft in the Superiority, beyond the Price or Consideration, if any, which he may receive for the Relinquishment.

§ 111 provides for the Form of Investiture by the Over-Superior, which, as has been mentioned, is No. 3 of Schedule (CC), and is to be written on the Deed of Relinquishment. The Section is referred to for its terms, which points out what the Writ must contain, and also gives Directions for obtaining the Writ from Chancery where the Over-Superior is the Crown, it being at the same time provided that on the Completion of the Investiture, whether from the Crown or Subject-Superior, the Vassal's Title to the Superiority is to be as complete as if it had been consolidated with the Property by Resignation *ad remanentiam*. Provision also is made by § 111 that this Procedure is not to extend the Rights or Interests of the Over-Superior in the matter of Duties and Casualties.

Application of Price of Entailed Superiority when Forfeited or Relinquished.

§ 112 provides that where a Right of Superiority, Forfeited or Relinquished, forms part of an Entailed Estate, the Forfeiture or Relinquishment is not to operate as a Contravention of the Entail, and that the Price paid for such Forfeiture or Relinquishment having been first consigned in one of the Chartered Banks of Scotland, is to be applied at the sight of the Court of Session in like manner, and to such and the like Purposes, as Purchase Money or Compensation coming to Parties having Limited Interests under the Lands Clauses Consolidation (*Scotland*) Act 1845, or any Act altering or amending the same; or the Act 11 and 12 Vict. c. 36; or the Act 16 and 17 Vict.

c. 94; but it is provided that where the Sum agreed to be paid

"for ALL the Superiorities which form part of an Entailed Estate"

shall not in all exceed the sum of £200, the same is to belong to the Heir in Possession, and the Court is to direct the same to be paid to him. It is also provided that the Price of such Superiorities may be applied by the Heir in possession for such Purposes or in such manner as may be authorised by any Private Act of Parliament authorising a Sale of the Entailed Estate, or any part thereof, or the Application of the Price thereof.

Price of forfeited or relinquished Superiorities of Entailed Lands may be charged on the Entailed Estate.

Where the lands, of which the Superiority is so forfeited or relinquished, are held by the *Vassal* under a Deed of Entail, he may (*t*) charge his Entailed Estate by Bond and Disposition in Security with the full amount of the Price paid for the Superiority and of the expenses of the relative procedure, provided that such Bond is granted either with the Consent of the Heirs of Entail, whose Consent would be required to the execution of an Instrument of Disentail of the Lands, or under the authority of a Judicial Warrant or a Decree of the Court of Session, pronounced on a Summary Petition by the Heir of Entail in possession, praying for such Warrant, the proceedings under such Petition being the same as those under a Petition to charge the Estate with Provisions to Younger Children under the Entail Amendment Acts of 1848 and 1853, excepting that Advertisement in the Gazette or any Newspaper is unnecessary.

Payment in lieu of Casualties of Superiority where Lands are held by or for Congregations, Religious Bodies, &c.

§ 113 contains a very useful provision, which is a re-

(*t*) The Act, § 112.

enactment of 13 Vict. c. 13, § 2, to the effect, that where Lands have been conveyed for Religious and other Purposes of the Nature referred to in the 26th section of this Act,^(u) and where no agreement has been made with the Superior for a periodical or other Payment, in Lieu of the Casualty and Composition payable by Law, or in terms of the Investiture, or where the Casualty and Composition have not been taxed, and where by Law and under the Terms of the Investiture Composition as on the Entry of a Singular Successor would, but for the provisions of said section, have been payable on the Entry of Singular Successors, the Superior may at the Death of the existing Vassal in the Lands, and at the Expiration of every twenty-five Years thereafter, so long as such Lands shall belong to, or shall be held for behoof of, the Congregation or Society or Body of Men, demand and take from them a Sum corresponding to the Casualty or Composition, if any, which would have been payable on the Entry of a Singular Successor ; and such payments shall be in full of all Casualties of Entry or Composition so long as the Subjects shall remain the Property of or be held for behoof of such Congregation, &c. ; but where the Casualty or Composition is not taxed in the Investiture, and the Lands are not situated in a Town or Village, or in the immediate vicinity thereof, the Casualty or Composition is to be held to be the Annual Rent or Annual Value of the Subjects, *if let as an Agricultural Subject*, at the time when such Casualty or Composition shall become due and exigible in virtue of this Act.

Writs of Resignation, &c., engrossed on Deeds to be authenticated.

Three General Provisions conclude this branch of the Act and are applicable to all Writs and Charters generally. *First* by § 114 it is provided that all Writs of Confirmation, Writs of Resignation, Writs of *Clare Constat*, and all other *Writs* or *Charters* granted in terms of the Act by Subject-Superiors, are to be authenticated in the forms

(u) *Vide supra*, p. 61.

required by the Law of Scotland in the case of ordinary Conveyances. This is a re-enactment of § 40 of the Titles Act of 1860, before which it was doubted whether Writs indorsed upon Deeds or Conveyances required such authentication.

All Charters and Writs from the Crown or Subject-Superiors to Confirm prior Titles.

Second—§ 115 has been already frequently adverted to. It extends and enlarges the corresponding provisions of the Acts of 1847, 1858, and 1860, and provides

“that every Charter and Writ, whether from the Crown or from a Subject-Superior, of whatever Description, shall operate a Confirmation of the whole prior Deeds and Conveyances necessary to be confirmed in order to complete the Investiture of the person obtaining such Writ or Charter.”

The application of this section to the various Forms of Writs and Charters above referred to has been pointed out in dealing with each as it occurred.

Stamp-Duties on Writs indorsed on Conveyances and Writs of Clare Constat, &c.

Third—§ 116 contains another useful provision, to the effect that the Stamp-duty chargeable on Writs of Confirmation, of Resignation, of *Clare Constat*, and of *Investiture* (except Crown Writs), and also on Writs of Acknowledgment under the Registration of Leases (*Scotland*) Act, shall be the same as those chargeable on similar *Charters* by Subject-Superiors, and may be paid by means of Adhesive Stamps, to be provided by the Commissioners of Inland Revenue.

II.—REDEEMABLE RIGHTS.

(I.) CONSTITUTION OF REDEEMABLE RIGHTS.

1. GENERAL OBSERVATIONS.

We have already pointed out^(u) the general nature of the changes which by the present Act have been made upon Heritable Securities,—the intention of the Legislature being, that although Money may still be secured upon Land, the Security shall henceforth be Moveable as to Succession, unless the Creditor shall desire it to be Heritable. It must not, however, be forgotten that the Act in no way affects the Security as regards the succession of the *Debtor*. It will, therefore, still remain a Burden affecting his Lands, and his successors therein, and will not affect his Executry Estate, unless where the lands and the Heir of the Debtor fail to satisfy the Debt.

(1) *Act extends to Heritable Securities of every Description.*

As the whole provisions of this Branch of the Statute are made applicable to Heritable Securities of all kinds,^(v)—although the “*Bond and Disposition in Security*” is the particular Form which has been selected as the subject of special enactment in the body of the Statute and of exemplification in the Schedules,—it is desirable, at the outset, to keep in view that, by the Interpretation Clause of the Act,

(u) *Vide supra*, p. 13.

(v) The Act, § 134.

“ the Words ‘ Heritable Security’ and ‘ Security’ shall each extend to and include all Heritable Bonds, Bonds and Dispositions in Security, Bonds of Annualrent, Bonds of Annuity, and all Securities authorised to be granted by the Seventh Section of the Act of the 19th and 20th Vict. c. 91, intituled, *An Act to Amend and re-enact certain Provisions of an Act of the Fifty-fourth Year of King George the Third relating to Judicial Procedure and Securities for Debts in Scotland*,^(w) and all Deeds and Conveyances whatsoever, Legal as well as Voluntary, which are or may be used for the purpose of Constituting or Completing or Transmitting a Security over Lands or over the Rents and Profits thereof, as well as such Lands themselves and the Rents and Profits thereof, and the Sums, Principal, Interest, and Penalties secured by such Securities, but shall not include Securities by way of Ground Annual, whether Redeemable or Irredeemable, or Absolute Dispositions qualified by Back Bonds or Letters.”

Adjudications in *Security and for Payment of Debt*, before Decree of Declarator of Expiry of the Legal, will fall under this category; but not Adjudications in Implementation.—See p. 173, Note (z).

(2) *All Securities to be Moveable as to Succession, except in certain cases.*

The leading enactment of the Statute regarding Heritable Securities is contained in § 117, which, being entirely new, we shall give at length, commenting upon it as we proceed. It begins by providing that

“ From and after the Commencement of this Act no Heritable Security granted or obtained either before or after that Date shall, in whatever Terms the same may be conceived, except in the Cases hereinafter provided, be Heritable as regards the Succession of the Creditor^(x) in such Security, and the same, except as hereinafter provided, shall be Moveable as regards the Succession of such Creditor, and shall belong, after the death of such Creditor, to his Executors or Representatives

(w) That is, Heritable Securities for Cash Credit.

(z) By the Interpretation Clause the word ‘ Creditor shall extend to and ‘ include the party in whose favour an Heritable Security is granted, and ‘ his Successors in Right thereof,’ and in another part of the same clause the word ‘ Successors’ is declared to ‘ extend to and include Heirs, Donees, Assignees, Legal as well as Voluntary, Executors and Representatives.’

in mobilibus, in the same manner and to the same extent and effect as such Security would under the Law and Practice now in force have belonged to the Heirs of such Creditor."

The effect of this enactment is, that henceforth, unless in the excepted cases which shall be immediately noticed, not only Money lent upon Land, but the Land itself as conveyed in Security of the Loan will, in cases of Intestacy, pass, on the Death of the Party in Right of the Security, not to his Heir-at-law—as is the case at present—but to his Representatives *in mobilibus*, and will, where the Creditor leaves a settlement of his Moveable Estate, belong to the Executors of the Settlement for the purposes thereof.(y)

It will be seen that the Act is to apply to all Securities existing at the Commencement of the Act on 31st December 1868, as well as to all Securities to be granted thereafter.

(3) *Act not to apply to Succession of Creditor who has died before 31st December 1868.*

It is, however, only as regards the Succession of a Party in Right of a Security at or after the commencement of the Act, that the Security is to be Moveable. In the case, therefore, of an Heritable Security forming part of the Succession of a Person who has died before 31st December 1868, the Security either will pass as at present to the Heir-at-Law of the deceased, or will be held and applied under any Trust-deed or other Settlement which he may have left, for the purposes of, and in manner directed by that Settlement. As regards the Succession, however, of the Heir, or of any Beneficiary to whom the Security may be destined, the Security will, after that date, be Moveable unless Executors shall afterwards be excluded by such Heir or Beneficiary in the manner provided by the Act, and now to be noticed.

(y) *Vide infra*, p. 168 ; and the Act, § 125.

(4) *Security may be made Heritable as to Succession, by Exclusion of Executors.*

Where it is desired that a Security existing at the commencement of the Act shall continue to be Heritable as to succession, or where, in the case of a Security granted after that date, it is desired to render it Heritable as to succession, the Creditor is to have power to do so. He may effect this object in various ways, viz., by taking the Security in favour of himself and his Heirs or Assignees or Successors excluding Executors; or, in the case of an existing or future Security, by excluding Executors in the manner after-mentioned, or by taking an Assignment thereto, excluding Executors. The words of the Statute in reference to this are as follows:

“ Provided always that where any Heritable Security is or shall be conceived expressly in favour of such Creditor and his Heirs or Assignees or Successors, excluding Executors, the same shall be heritable as regards the Succession of such Creditor, and shall, after the Death of such Creditor, belong to his Heirs in the same manner and to the same extent and effect as is the case under the existing Law and Practice in regard to Heritable Securities; and Provided also that where a Creditor in any existing or future Security *recorded*, or on which an Instrument (z) has followed *recorded in the Register of Sasines*, shall desire to exclude Executors, it shall be competent for him to do so by executing a Minute in the Form or as nearly as may be in the Form of Schedule (DD) hereto annexed, (a) and Recording the same in the appropriate Register of Sasines, and upon such Minute being recorded the Security to which it refers shall be Heritable in the manner and to the extent and effect hereinbefore provided; and further provided that where in any existing or future security *which has not been recorded* or followed by an Instrument recorded in the Register of Sasines, or where in the case of any Conveyance or Deed of or relating to such Security *not recorded* in the Register of Sasines the Creditor shall desire to exclude Executors, it shall be competent for him to do so by indorsing a Minute in the Form or as nearly as may be in

(z) That is, an Instrument of Sasine or a Notarial Instrument. (See Interpretation Clause.)

(a) See Appendix, p. 123.

the Form of Schedule (DD) hereto annexed, on the Security or on the Deed or Conveyance thereof in his favour, which *has not been recorded as aforesaid*, and recording the same along with such Security, or with such Deed or Conveyance, as the case may be, in the appropriate Register of Sasines, and upon such Security, or Deed, or Conveyance, as the case may be, and Minute being so recorded the Security shall be Heritable in the manner and to the extent and effect hereinbefore provided."

There are thus three ways in which Executors may be excluded from a Security so as to render the Succession thereto Heritable, viz.—

(1) By taking the Security originally to the Creditor, and to his Heirs or Assignees or Successors, excluding Executors; or by taking an Assignation to an Assignee and his Heirs, &c., excluding Executors. (*See Schedule (GG), Appendix, p. 125.*)

(2) In the case of an existing or future Security which has been recorded or followed by an Instrument recorded in the Register of Sasines where Executors have not been excluded, their Exclusion may be effected by the Creditor executing a Minute in the form of the Schedule, and recording it in the Register of Sasines; and

(3) Where an Existing or future Security has not been recorded or followed by an Instrument recorded in the Register of Sasines, or where the Creditor has Right to the Security by a Conveyance thereof not yet recorded, the exclusion may be effected by a similar Minute of Exclusion being indorsed upon the unrecorded Security itself or upon the unrecorded Conveyance thereof, and recorded in the Register of Sasines, along with the Security or Conveyance thereof, as the case may be.

As the Forms of the Minutes of Exclusion and of Removal of the Exclusion are expressed in very general Terms in the Schedules, and as it is of importance that the *Lands* over which the Security is granted should be named as well as the date, &c., of the Bond, we have given in the *Appendix*, p. 145, examples of each of these Minutes at full length.

(5) *Removal of Exclusion of Executors renders Succession Moveable.*

But even where Executors are thus excluded the Security may be at any time rendered Moveable as to Succession by removing the Exclusion; for the Act goes on to provide that

“where Executors shall be excluded in the Security, or by Minute recorded as aforesaid, the Security shall continue to be Heritable as regards the Succession of the Creditor for the time holding such Heritable Security until the exclusion of Executors shall be removed, which it shall be lawful for such Creditor to do either by executing a Minute in the form or as nearly as may be in the form of Schedule (EE) (b) hereto annexed, and recording the same in the appropriate Register of Sasines, whereupon the Security shall become Moveable as regards the Succession of such Creditor as provided by this Act, or by Assigning, Conveying, or Bequeathing such Security to himself or to any other Person without expressing or repeating such Exclusion, and upon such Assignment, Conveyance, or Bequest taking effect, (c) the Security shall become Moveable as regards the Succession of such Creditor or other Person, as the case may be, as provided by this Act.”

The various ways, therefore, of removing the Exclusion of Executors are numerous, being either by Minute recorded in the Register of Sasines (see *Appendix*, p. 145), or by Assignment, Conveyance, or Bequest of the Security, without expressing or repeating the Exclusion.

(6) *Heritable Securities to remain Heritable quoad Husband and Wife, and quoad Fiscum.*

For the same reason, however, which led to Personal Bonds after the term of Payment, if they bear a Clause of interest, being declared by the Act 1661, c. 32, to retain their natural Heritable character as to Spouses and the

(b) See *Appendix*, p. 123.

(c) The Assignment or Conveyance, if intended to operate *inter vivos*, will be held to take effect when delivered, or, if *mortis causa*, when the Right opens to the Assignee or Disponent; and the Bequest will take effect when the Right vests in the Legatee.

Fisk, although made moveable by the Statute—as to Succession generally,—the present Act goes on to provide

“that all Heritable Securities shall continue and shall be Heritable *quoad Fiscum*, and as regards all Rights of Courtesy and Terce competent to the Husband or Wife of any such Creditor, and that no Heritable Security, whether granted before or after Marriage, shall to any extent pertain to the Husband *jure mariti*, where the same is or shall be conceived in favour of the Wife, or to the Wife *jure relictæ* where the same is or shall be conceived in favour of the Husband, unless the Husband or Relict has or shall have Right and Interest therein otherwise: Declaring nevertheless that this provision shall in no way prejudice the Rights and Interests of Wife or Husband, or of the Creditors of either, in or to the bygone Interest and Annualrents due under any such Heritable Security and *in bonis* of the Husband or Wife respectively prior to his or her death.”

This part of the Act needs no comment.

(7) *Heritable Securities not to be computed in calculating Legitim.*

The Section concludes with a *Proviso* to the effect

“that where Legitim is claimed on the Death of the Creditor, no Heritable Security shall to any extent be held to be part of the Creditor's Moveable Estate in computing the amount of the Legitim.

We have already (d) pointed out the object and operation of this last *Proviso*, which in effect adds Heritable Securities to the Dead's Part of the Moveable Estate of a Defunct, subject of course to the widow's terce. Opinions may differ as to the Propriety of excluding Heritable Securities from the Fund out of which Legitim is to be claimed. Some persons consider that there is no good reason for thus restricting the fund for Legitim. Others, again, consider that the Claim of Legitim should be abolished altogether. On the whole, we think that it will be generally admitted that, while the Legislature have acted wisely in declaring that a Sum of Money, which is *sua natura* a Moveable Subject, should not in the general case be converted into

(d) *Vide Supra*, p. 14.

an Heritable Estate merely by being lent on the Security of Land, no less wisdom has been displayed in excluding money so invested from the general Estate of a defunct Father in computing the Legitim due to his children. It frequently happens, especially in large Manufacturing and Commercial Towns, that persons who have been married in early life without having executed any Antenuptial Marriage-Contract, have afterwards lent out a portion of their savings on Heritable Security, which is a favourite form of Investment. In a great majority of such cases there is little doubt that this is done mainly with a view to the safety of the funds, and that it is not thereby intended either to create an Estate for the Heir-at-Law of the party making the investment, to the exclusion of his Younger Children, or, on the other hand, to prevent himself from disposing of the Money, so invested, by his Settlements or in any manner he may think right.

2. FORM OF BOND AND DISPOSITION IN SECURITY.

The only Form of an Heritable Security given in the Statute is that of a Bond and Disposition in Security, such being the Form now almost invariably adopted in constituting ordinary Heritable Securities. The Form is contained in No. 1 of Schedule (FF), annexed to the Act.^(e) The clause giving statutory effect to this Schedule is § 118 of the Act, which substantially re-enacts § 1, and Schedule (A) of 10 and 11 Vict. c. 50, the principal difference between that form and the Schedule of this Act being—(1) that whereas under the former Act the Bond was taken payable to the Creditor “or *his Heirs and Assignees whomsoever*,” the Bond under the present Act is taken payable to the Creditor “*his Executors [or his Heirs, excluding Executors] or Assignees whomsoever*,” and (2) that the Bond under the present Act omits the Clause of Consent to Registration in the Register of Sasines, which was contained in the Bond under the Act of 1847,

(e) See *Appendix*, p. 123.

but which has been, we believe, in practice very generally omitted since the passing of the Titles to Land Act of 1858, and which is rendered unnecessary by the provision in § 120, that all Heritable Securities may be registered in the appropriate Register of Sasines; and, by the further provision in § 141, that all Deeds, &c., before being so recorded, must have a Warrant of Registration written thereon.

The section (§ 118) goes on to provide that from and after the Commencement of this Act any person entitled to grant an Heritable Security by way of Bond and Disposition in Security may grant the same in the Form or as nearly as may be in form of No. 1 of Schedule (FF).^(e) The Registration of such Bond and Disposition in Security, or of any Bond and Disposition in Security granted according to any Forms competent or in use prior to the Commencement of the Act, is to be as effectual and operative to all intents and purposes as if the Security had contained, in the Case of Lands not held by Burgage Tenure, an obligation to infest *a me vel de me*, Procuratory of Resignation, and Precept of Sasine, and in the case of Lands held by Burgage Tenure, an Obligation to infest *more burgi* and Procuratory of Resignation, all in the words and form in use prior to 30th September 1847, and as if the same had been followed by Sasine, or by Resignation and Sasine, as the case may be, in favour of the Original Creditor, duly recorded in the appropriate Register of Sasines at the date of the Registration of the Bond and Disposition in Security.

All Heritable securities, however, as well as the Bond and Disposition in Security, may be in a similar form *mutatis mutandis*, as by § 134 it is provided that the above enactments and forms are to apply as nearly as may be to all Heritable Securities unless in so far as such provisions, enactments, or forms may be inapplicable to the form or objects of such Securities. The meaning of which is, that in any other Heritable Security, such as a Bond of Annui-

(f) See *Appendix*, p. 123.

ty, Bond of Annualrent, Heritable Bond, or the like, the short clauses in the form (FF), or such of them as may be applicable, may be used in place of the longer clauses formerly in use ; and that Registration of the Security, in whatever form, is to be equivalent to infeftment. It is important, however, also to observe that by § 135 parties may still employ the old forms of Constituting Heritable Securities which were in use prior to 1st October 1845.

1. *Explanation of Clauses of Bond and Disposition in Security.*

Section 119 explains the Clauses of the Bond and Disposition in Security as exemplified in Schedule (FF), No. 1. We shall here enumerate them in their order.

(1) *Consideration and Clause binding Grantor to pay Sum Borrowed, Principal, Interest, &c.*

This Clause is thus expressed :—

“I, A.B. [*here name and design the Grantor*], Grant me to have instantly borrowed and received from C.D. [*here name and design the Creditor*] the sum of [*insert the Sum*] sterling ; Which Sum I bind myself, and my Heirs, Executors and Representatives whomsoever, without the necessity of discussing them in their order, to repay to the said C.D., his Executors [*or his Heirs, excluding Executors*] or Assignees whomsoever, at the Term of [*here insert the Date and Place of Payment*], with a Fifth part more of Liquidate Penalty in case of failure, and the Interest of said Principal Sum, at the Rate of per centum per annum, from the Date hereof to the said Term of Payment, and half-yearly, termly and proportionally thereafter, during the Not-payment of the same ; and that at two Terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first Term’s Payment of the said Interest at the Term of next, for the Interest due preceding that Date, and the next Term’s Payment thereof at following, and so forth, half-yearly, termly and proportionally thereafter, during the Not-payment of the Principal Sum, with a fifth part more of the Interest due at each term of Liquidate Penalty in case of failure in the punctual Payment thereof.”

It is by § 119 declared that this

“Clause obliging the Grantor to pay the Amount due under

the Bond, Principal, Interest, and Penalty to the Creditor, his Heirs, Executors or Assignees, shall, *unless where Executors are excluded*, be held to import an Obligation to pay the same to the Creditor *and his Representatives in mobilibus*, and his Assignees, *and where there is or shall be such exclusion*, to the Creditor and his *Heirs* and Assignees."

This enactment must of course be read in connection with § 117, which confers no right on the Executors of a Creditor unless he shall have been at or after the commencement of the Act in right of an existing or future Security from which Executors have not been excluded.

(2) *Disposition of Lands in Security of the Personal Obligation.*

The Bond goes on to say—

"And in Security of the Personal Obligation before written, I Dispose to and in favour of the said *C.D. and his foresaids*, Heritably but Redeemably as aftermentioned, yet Irredeemably in the event of a Sale by virtue hereof, All and Whole [*here Describe or Refer as in Schedule (E) or Schedule (G) to the Lands*],(g) and that in Real Security to the said *C.D. and his foresaids* of the whole Sums of Money above written, Principal, Interest, and Penalties."

The meaning of this clause is thus given in § 119:—

"The Clause disposing the lands to such Creditor and his fore-saids heritably shall, *unless where Executors are excluded*, be held to import a Disposition of such Lands to such Creditor *and his Representatives in mobilibus*, and his Assignees, *and where there is or shall be NO(h) such exclusion*, to such Creditor and his Heirs and Assignees, in Security, in manner specified in the Bond and Disposition in Security, with all the Rights and Powers at present competent to a Creditor and his Heirs under such a Security."

(g) In a Note to the Schedule it is stated, 'If the Lands are held under any Real Burdens, Conditions, Provisions, or Limitations, insert them here, or refer to them in or as nearly as the Circumstances may require in the Form of Schedule (D).'

(h) This word "no" has by an unfortunate oversight crept into this part of the Section which should have been an echo of the explanation of the corresponding part of the Personal Obligation, to pay the Debt to the Creditor, 'his Heirs, excluding Executors, or Assignees whomsoever,' in cases '*where there is or shall be such exclusion.*' The effect of the insertion of the word 'no' is at first sight to nullify the immediately preceding decla-

(3) *Other Clauses of the Bond and Disposition in Security.*

The remaining Clauses of the Bond and Disposition in Security are then explained in their order. These are:—

(1) Clause of Assignment to the Rents.

ration that, *unless where executors are excluded*’ (i.e., where there is no exclusion), the *Lands* are to go to the Executors and Representatives *in mobilibus*, and to carry them to the *Heirs* and Assignees of the Creditor, while the Money is to be repaid to his Executors or representatives *in mobilibus*. This, however, does not appear to us to be the true construction of the clause. Such a construction is inconsistent not only with the immediately preceding declaration that, unless where executors are excluded, the *Lands* are to go to the Executors and Representatives *in mobilibus* of the Creditor, but, what is of more importance, it is inconsistent with the leading enactment of the § 117, which provides at the outset that *every Heritable Security* (which under the Interpretation clause includes both the Sum Lent and the *Lands* over which it is secured) shall, except where Executors are excluded, be Moveable as regards the Succession of such Creditor, and shall belong after his Death to his Executors or Representatives *in mobilibus* in the same manner and to the same extent and effect as such security would, under the Law and Practice now in force, have belonged to the *Heirs* of such Creditor. It is thus clearly impossible that the portion of § 119 with which we are now dealing can have effect consistently with the immediately preceding context of that section and with the leading enactment of § 117 regarding the Succession to Heritable Securities. It appears to us, therefore, that the words of § 119 now under consideration, namely, ‘where there is or shall be *no* such exclusion ‘to such creditor and his heirs and assignees’ must be held as *pro non scriptis*, the effect of which will be to leave the words in the Schedule, viz. ‘to *C. D.*, his *Heirs*, *Excluding Executors or Assignees whomsoever*,’ to be interpreted according to their own natural meaning, which is quite obvious and unmistakable, and which can only be that the security is to pass on the creditor’s death to the parties who, under the Law as it at present stands, would be entitled to succeed thereto *ab intestato*, that is, to the heirs-at-law of the creditor, and not to his Executors. While, however, this is our decided opinion, we at the same time think that it is in every way desirable that a short Act of Parliament should be passed for the purpose of correcting what is undoubtedly an error, and advantage might be taken of the opportunity to amend the Act in reference to the other doubtful points on which we have already commented *supra*, Note (r), p. 56, and p. 182; and *infra*, p. 176, Note (d). In the meantime we would suggest, that in framing a Bond and Disposition in Security, it would be prudent to express the Dispositive Clause as follows, ‘And in Security of the Personal Obligations before written, I dispose to and in favour of the said *C. D.*, his Executors or Assignees whomsoever [or his *Heirs*, *excluding Executors, or Assignees whomsoever*, as the case may be] Heritably,’ &c., in place of saying to the said ‘*C. D. and his forebears.*’

- (2) Clause of Assignment to Writs.
- (3) Clause of Warrantice.
- (4) Clause reserving Power of Redemption.
- (5) Obligation by the Debtor for the Expenses of Assigning and Discharging the Security.
- (6) Clause Granting Power of Sale in default of Payment; and
- (7) Consent to Registration for Preservation and Execution.

It is unnecessary here to enter into any full explanation of the Nature and Effect of these clauses as the explanation given in § 119 is ample and distinct, and is substantially a repetition of the Explanation of the similar Clauses, Schedule (A) of the Act 10 and 11 Vict. c. 50—given in §§ 2 and 3 of that Statute.

It may be mentioned, however, that the statutory Explanation of the short Clauses of the Security embodies the copious and indeed prolix language in which, prior to 1847, the Clauses, which are now so briefly expressed, used to be set forth in the old form of the Bond and Disposition in Security, and declares that the short Clauses are to have the same meaning and effect as the corresponding long Clauses of the Old Deed; which meaning and effect are to be sought for in the Statute.

The only material points of difference between the meanings assigned to these short Clauses by the present Act and those which were assigned to them by the Act of 1847 are:—

1. That the Clause of Assignment to Rents,—besides authorising the Creditor on default of payment to enter into possession of the Lands disposed in Security, and to uplift the rents thereof subject to Accounting to the Debtor for Intromission therewith,—gives power to uplift the Rents where the Lands are not disposed in Security—*e.g.*, where the Bond is a Bond of Annuity, or a Bond of Annual Rent, or an Heritable Bond—and also power to Insure all Buildings against Loss by Fire, and to make all necessary Repairs on the Buildings, and to take Credit, in

the Accounting with the Debtor, for the amount of Rents required for payment not only of the Debt, Principal, Interest, and Penalty, but also of the Expenses of Management, Insurance, and Repairs.

2. That the Clause Reserving Right of Redemption which, under the Act of 1847, implied that the lands should be redeemable by the Grantor from the Grantee at the Term and Place of Payment, or at any subsequent Term, on due Premonition, and that by Payment to the Grantee of the Principal Sum, Interest, and Penalty, and in case of his Absence or Refusal to receive the same,

“ by Consignation thereof in one or other of the Banks in Scotland incorporated by Act of Parliament or Royal Charter, having an Office or Branch at the Place of Payment, to be made forthcoming on the peril of the Consigner, the Place of Redemption to be within the Office of such Bank or Branch thereof,”

has now been modified to the effect that such Consignation is to be made in the

“ Bank specified in the Security, if any bank shall be so specified, and if not, then in one or other of the Banks in Scotland,” &c.

3. A short and inexpensive form (*f*) of Intimation, Requisition and Protest by which the Grantee may call up his debt is also substituted for the long form previously in use; and a copy of the Requisition certified by the Notary Public (Schedule (FF) No. 3) is to be sufficient evidence of the Demand for Payment—thus rendering unnecessary a separate Instrument, &c., as is at present in use.

4. The Advertisements which are to precede the Public Sale of the Lands in the security after the expiration of the three months' premonition duly given by the Requisition above mentioned, are now to be made once weekly for at least six weeks in any newspaper published in Edinburgh or in Glasgow, (*g*) as well as in a newspaper pub-

(*f*) The Act, Schedule (FF), Nos. 2 and 3. See *Appendix*, p. 124.

(*g*) The option of advertising in Glasgow is a new provision under the present Act, and has been given in consideration of the great number of Heritable Securities which are constituted over Property in that City and its vicinity.

lished in the County where the Lands are situated, or, if there be no Newspaper published in such County, then in any Newspaper published in the next or neighbouring County. If the sale is adjourned, the Advertisements are to be repeated once weekly in each of said Newspapers for Three Weeks before the next Exposure of the Lands. As these Advertisements are matters of Statutory Requirement, it has always hitherto been considered necessary to preserve among the Titles Copies of all the Newspapers in which these Advertisements were made, and which, from their number, added greatly to the bulk of a progress of titles, especially where the sale had been adjourned and the Advertisements had, in terms of the Statute, been repeated. The present Act removes that inconvenience by enacting, also in § 119, that

“a Certificate by the Publishers of such Newspapers for the time shall be *prima facie* Evidence of such Advertisement.”

The remainder of the Section is identical with the remainder of § 3 of the Act of 1847, and will be found at length in the *Appendix* hereto, and requires no special remark.

2. *Sale under the Act to be valid to Purchaser.*

§ 121 re-enacts 10 and 11 Vict. c. 50, § 7, and provides that a Sale carried through in terms of the Security and of the present Act, or partly in terms of any Act in force at the passing of the present Act and partly in terms of the present Act, if the proceedings shall have been begun before the Commencement of the Act, are to be as valid and effectual to the purchaser as if made by the Grantor of the Security himself; and that whether the Grantor shall have died before or after the Sale, and without the necessity of Confirmation by him or his Successors, and notwithstanding that the Debtor in the Security and in right of the Lands at the time shall be in Pupilarity or Minority, or subject to any Legal Incapacity. This provision, however, is made without prejudice to the Obligation

of the Grantor and his Successors to execute, or the Right of the Creditor or Purchaser to require the execution of any Deed or Deeds which, independently of the Statute, would at Common Law be necessary for rendering the Sale effectual, or otherwise completing in due form the Titles of the Purchaser.

3. *Creditor Selling to Count and Reckon for Price.*

§ 122 re-enacts 10 and 11 Vict. c. 50, § 8, and provides that Creditors selling under the Security and in terms of the Act are to Count and Reckon for the Price, and to Consign in Bank the Surplus which may remain, after deducting the Debt Secured, with Interest, Penalty, and Expenses in reference to the possession of the estate, if the Creditor has been in Possession, including the Expense of Insurance, Repairs, and Management, and whole Expenses attending the Sale, and all previous Incumbrances, and the Expensé of discharging the same. It is provided that the Bank in which such Consignation is to be made is to be specified in the Articles of Roup, and the Consignation is to be made in the joint Names of the Seller and Purchaser for behoof of the party or parties having best Right thereto.

4. *On Sale and Consignation of Surplus Price, the Lands are to be disencumbered.*

§ 123 re-enacts 10 and 11 Vict. c. 50, § 9, and provides that upon a Sale being carried through in terms of this Act, and upon Consignation of the Surplus of the Price the Disposition by the Creditor to the Purchaser is to have the Effect of completely disencumbering the Lands sold of all Securities and Diligence posterior to the Security of the Creditor, as well as of the Creditor's own Security and Diligence.

5. *Registration of Security in Register of Sasines.*

Prior to 1847 it was necessary in order to make the Security real by Infetment that the Bond and Disposition

in Security should be followed by an Instrument of Sasine duly recorded in the appropriate Register of Sasines. The Act 10 and 11 Vict. c. 50, § 1, permitted the Security to be itself recorded,^(h) such Registration having the effect of Infefment. The present Act (§ 118) re-enacts that provision; and farther, by § 120, which re-enacts § 6 of the Act of 1847, it is provided that Heritable Securities, whether dated before or after the Commencement of the Act, may be registered at any time during the lifetime of the Grantee, or, where a Security has not been so registered in his Lifetime, it is to be as full and sufficient a warrant for completing the Title of the Party having right thereto as if it had been a Bond and Disposition in Security with Precept of Sasine and other Clauses in the form in use prior to 30th September 1847, which Title may be completed in the manner pointed out by this Act,⁽ⁱ⁾ or by Service or Notarial Instrument, as the circumstances of each case may require. The date of the Registration of the Bond is, in Competition, to be held to be the date of the Security.

(II.) TRANSMISSION OF REDEEMABLE RIGHTS.

1. *Completion of Title of Assignees or Successors inter vivos or inortis causa when the Security has been constituted by Infefment.*^(j)

Having now explained the provisions of the Statute as to the Constitution of Heritable Securities, we pass to the

(h) *Vide supra*, p. 5.

(i) The Act, § 130. *Vide infra*, p. 175, *et seq.*

(j) Transmission of Securities before being constituted by Infefment has always been of rare occurrence, as every good Conveyancer takes care that no time is lost in securing his Client by passing Infefment on the Bond immediately on the same being granted. The Transmission of securities before being constituted by Infefment is regulated by § 130 the Act.—*Vide infra*, p. 175, *et seq.*

enactments regarding the Transmission of such Securities. Prior to 1845 the Transmission of an Heritable Security constituted by Infeftment was a very cumbrous, prolix, and expensive proceeding. It required a Deed termed a "Disposition and Assignation" of the Security, usually narrating the whole of the Original Security and containing an Assignation thereof and a conveyance of the Lands with a Precept of Sasine. This Deed required to be followed by an Instrument of Sasine recorded in the Register of Sasines in order to complete the Real Right of the Assignee.

(1) *Form of Assignation of Security inter vivos.*

The first great improvement in the mode of transmitting Heritable Securities was effected by the Act 8 and 9 Vict. c. 31, § 1, which provided for a short Form of Assignation to be recorded, without Sasine following thereon, in the Register of Sasines, but with the effect of Infeftment in favour of the Assignee. We have already pointed out (*k*) that this improvement was made in pursuance of a suggestion to that effect contained in the Report of the Law Commission. This useful provision has been re-enacted by the present Act, (*l*) which provides that

"where an Heritable Security, whether dated before or after the passing of this Act, has been constituted by Infeftment, whether such Infeftment has been taken by recording the Security or an Instrument (*m*) thereon in the appropriate Register of Sasines in terms of this Act, or any of the repealed Acts, or by any mode competent or in use prior to the 30th day of September 1847,"

the Right of the Creditor may be transferred by Assignation in the form of Schedule (GG) annexed to the Act. (*n*)

(2) *Completion of Title of Assignee by recording Assignation or Notarial Instrument.*

The Registration of the Assignation in the appropriate

(*k*) *Vide supra*, p. 8.

(*l*) The Act, § 124.

(*m*) This means an Instrument of Sasine or Notarial Instrument.

(*n*) See *Appendix*, p. 125.

Register of Sasines completes the Title of the Assignee as effectually as if a transfer had been made by Disposition and Assignment in the old form followed by Sasine duly recorded. The effect of the Assignment is further declared to be that the Assignee is to be held as fully entered as if he had obtained a renewal of the Investiture in his favour according to the Law and Practice in use before 1845.

A *proviso* is added, similar to the enactment already noticed(o) with regard to the Conveyance of Irredeemable Rights, to the effect that where an Assignment of an Heritable Security constituted by Infeftment is contained in any other Conveyance or Deed, the whole of such Conveyance need not be recorded, but a Notarial Instrument in the form of Schedule (HH) (p) may be expedite and recorded, which is to have the same effect as the Registration of the Assignment itself. These Schedules [(GG) and (HH)] are also made applicable to the case of the Assignment being granted by a person other than the Original Creditor, or of the Instrument being expedite in favour of a person other than the Original Assignee, in both of which cases the deduction of the Titles is required to be made in the manner pointed out in the Schedules. The Assignment before being recorded must have a Warrant of Registration indorsed upon it in terms of § 141 (*Vide supra*, pp. 43, 46).

(3) *Transmission of Security Mortis Causa, or by Succession.*

The Assignations and Instruments above described are intended only for the Case of Transference of the Security

(o) *Vide supra* p. 50.

(p) *See Appendix*, p. 126. It will be observed that a slight variation has been made in the form of these Notarial Instruments. The Schedules of the Act of 1845 commenced thus:—‘Be it known that by Bond and ‘Disposition in Security,’ &c. In order to preserve the uniformity of the Schedules to the present Act, the Notarial Instruments relating to Redeemable Rights are expressed in language similar to those applicable to Irredeemable Rights, &c. All of them now commence as follows, viz., ‘At there was by or on behalf of A. B.,’ &c., ‘presented to me, Notary ‘Public subscribing, a Bond,’ &c.

inter vivos. Other forms are provided by the Statute for the Transmission of the Security from the Dead to the Living. This may be done by a Deed executed by the Creditor to take effect after his Death, or it may be left to be effected by operation of the Law where he dies intestate; and the form of Completing the Title of the Successor will depend upon whether Executors have been excluded from the Security or not.

1. *Completion of Title of Successors in Testate Succession where Executors have not been excluded from the Security.*

This matter is regulated by §§ 125 and 127 of the Act.

A. *Writ of Acknowledgment in favour of Executor-Nominate or Disponee.*

125 provides that

“Upon the Death of any Creditor in right of an Heritable Security constituted by Infestment as aforesaid from which Executors shall not have been excluded, who shall die leaving a Testamentary or *Mortis Causa* Deed or Writing, (q) naming Executors, or Disposing or Bequeathing his Moveable Estate to Disponees, or Disposing or Bequeathing the Security to Legatees, it shall be competent for the Executors or Disponees *duly confirmed*, or for the Legatees, (r) as the case may be, to complete a Title thereto by a Writ of Acknowledgment to be granted in their favour by the Debtor in the said Security infest in the Lands comprehended therein, in or as nearly as may be in the form set forth in the Schedule (II) hereto annexed.” (s)

The Section is one of the new Clauses of the Statute, and has been rendered necessary by the change intro-

(q) A General Disposition of the Creditor's whole Estate, Heritable and Moveable to a General Disponee, or to Trustees, is a Testamentary or *mortis causa* Deed or Writing in the sense of this Clause, but a General Disposition of the Creditor's whole Heritable Estate alone will not fall under this category as regards Securities from which Executors have not been excluded.

(r) The bequest of the Security to a Special Legatee would be a Special Assignment not requiring Confirmation.

(s) See *Appendix*, p. 127.

duced by § 117, making Heritable Securities Moveable as to Succession, unless where Executors are excluded. The Writ of Acknowledgment (which was introduced by the Act 8 and 9 Vict. c. 31, as a mode of completing the Title of the *Heir* to the Security under the Law then in force), is now made applicable to the case of a party having Right to the Security by any Testamentary or *mortis causa* Deed or Writing, whether as Executor or Disponee or Legatee, and of course whether the Deed is a Simple Testament, or is in the form of a Regular Feudal Conveyance of the Security, or is in the form of Settlement sanctioned by the 20th Section of the present Act. The form of the Writ of Acknowledgment which is based upon Schedule No. 2 of the Act of 1845 is made applicable to the altered state of the law, and will be found to contain very full directions for the mode of filling up the blanks which are necessarily left in the Schedule. It is unnecessary to notice its terms in detail, as it is thought that these contain all the necessary information and instructions for adapting the Schedule to practical use.

It should, however, be observed that the Section (§ 125) goes on to provide that

“when the Executors or Disponees (*being more than one*) shall be appointed under such Deed or Writing for holding the Moveable Estate of the deceased in Trust for the purposes of the Deed or Writing, and not wholly for their own beneficial Interest, it shall be competent (*when not expressly precluded by the Terms of the Deed or Writing*) to take the said Writ in favour of the said Executors or Disponees and the survivors or survivor of them.”

Due provision is made for such a case in the Schedule.

Registration of the Writ in the Register of Sasines completes the Right of the party holding and recording the same.

(B) *Notarial Instrument in favour of Executor-Nominate, or Disponee, &c.*

Where the Executor-Nominate, or Disponee, or Legatee,

having Right to the Security under a Deed or Writing of the nature above described does not desire to complete his Title by Writ of Acknowledgment, he may, under § 127, complete his Title by Notarial Instrument in the form (KK) (t) annexed to the Act, which may be taken to the Survivors or Survivor of them in the same way as the Writ of Acknowledgment may be so taken (*vide, supra*, p. 170). No special provision for the destination to Survivors is made in the Schedule, but this can easily be supplied by the Conveyancer after the words "*by or on behalf of A.B. of, &c.*" It should also be noticed that in one of the alternative directions of the Schedule the word "*deceased*" has been *per incuriam* inserted before "A.B.;" that word will of course be omitted in framing the Instrument.

Registration of the Instrument in the appropriate Register of Sasines will complete the Title of the party in whose favour it is expedite and recorded.

2. *Completion of Title of Successors ab intestato by Notarial Instrument where Executors have not been Excluded from the Security.*

This matter is regulated by § 126 of the Act, which enacts that

"Upon the Death of any Creditor who shall die *intestate* in Right of an Heritable Security constituted by Infefment as aforesaid, from which Executors shall not have been excluded, it shall be competent to the Executors *duly confirmed* to such deceased Creditor to complete a Title to such Security by expediting and recording an Instrument under the hands of a Notary-Public in the form or as nearly as may be in the form set forth in Schedule (JJ) (u) hereto annexed.

The Instrument may, as in case of the Writ of Acknowledgment, be taken to the Survivors or Survivor of the Executors, where they are not entitled to the deceased's moveable estate wholly for their own beneficial interest. Registration of the Instrument in the Register of Sasines will complete their title.

The terms of the Schedule (which is also to be used

(t) See *Appendix*, p. 128.

(u) See *Appendix*, p. 128.

in the case of an Heir to a Security from which Executors have been excluded, or which belonged to a Creditor who died before the Commencement of the Act) require no special comment, except that, if required, the words "*and the Survivors and Survivor of them*" may be added after the words "*by or on behalf of A.B. of,*" &c.

3. *Completion of Title of Successors in Testate Succession, where Executors have been excluded from the Security, or where the Creditor died before 31st December 1868.*

Where the Creditor in the Security has died before the Commencement of this Act, leaving a *mortis causa* (v) Conveyance thereof, or of his Heritable Estate generally, or where the Creditor shall die after the Commencement of the Act in Right of an Heritable Security from which Executors shall have been excluded, leaving such a *mortis causa* Conveyance thereof, or a Testamentary Deed or Writing within the meaning of the 20th section of the Act, so expressed as to carry the Security or the Creditor's Heritable Estate generally,—it is, by a part of § 127, made competent to the Grantee or Legatee to complete a Title to the Security by a Notarial Instrument which is to be in the form of Schedule (KK). (w) Registration of the Instrument in the Register of Sasines will complete the Title of the party in whose favour the same is expedite or recorded. This part of § 127 is substantially a re-enactment of § 4 of 8 and 9 Vict. c. 31.

4. *Completion of Title of Heir ab intestato where Executors have been excluded from the Security, or where the Creditor died before the 31st December 1868.*

(A) *Writ of Acknowledgment in favour of Heir.*

Where the Creditor in the Security has died intestate

(v) Such Conveyance must have been a General Disposition or other Settlement capable of conveying Heritage according to the forms in use before the passing of the Act, as § 20 of the Act does not apply to Settlements executed by a party predeceasing the Commencement of the Act.

(w) See *Appendix*, p. 128. This is the same form as is to be used by

before the Commencement of the Act, or where he shall die intestate after the Commencement of the Act in Right of a Security from which Executors have been excluded, the Security will of course in either case pass to his Heir-at-law in the same manner as it does under the Present Law and Practice. In such a case the Heir may, in terms of § 125, complete his title by a Writ of Acknowledgment—viz., in the way in which he would have done under the Act 8 and 9 Vict. c. 31. The form of Writ is that set forth in Schedule (II) already referred to, (x) which is the same as the Form to be employed by Executors-Nominate, &c., in completing their Title to a Security from which Executors have not been excluded. The Schedule contains full directions for the adaptation of the Writ to the Case of the Heir-at-law as well as of such Executors, &c. Registration of the Writ in the appropriate Register of Sasines completes the Title of the Heir.

(B) *Notarial Instrument in favour of Heir.*

An heir having Right to a Security in either of the cases specified in the preceding paragraph may complete his Title thereto by Notarial Instrument instead of by Writ of Acknowledgment. This is provided for by § 128, which is a re-enactment of 8 and 9 Vict. c. 31, § 4, *mutatis mutandis*. The Heir is in the Act defined to be

“the nearest and lawful Heir of such Creditor who according to the present Law and Practice would be entitled to succeed to such Security;”

and before expeding the Instrument he must be served Heir to the Creditor in General or in Special and in the proper Character. Having done this he may then expedite a Notarial Instrument in the form of Schedule(JJ). (y)

Executors-Nominate, &c., in making up a Title by Instrument to a Security, from which Executors have not been excluded. Minute directions are given in the Schedule for adapting the form to both classes of cases (*vide supra*, p. 170).

(x) *Vide supra*, p. 169, and *Appendix*, p. 127.

(y) See *Appendix*, p. 128. This is the same Instrument as that to be used by the *Executor-Dative* of a Creditor who died Intestate in right of a

Registration of the Instrument in the Register of Sasines completes the Title of the Heir.

(4) *Completion of Title of Adjudger of Security.*

In our remarks upon Adjudication of Lands generally (2) we stated that, differing from the previous Statutes, the present Statute provided separately for Adjudication of Heritable Securities. The mode of procedure, however, in obtaining the Decree of Adjudication, whether for Debt, or in Implement of the Decree of Constitution preceding or combined with such Decree of Adjudication, and the effect of the Decree when obtained, will be the same as if the Subjects adjudged were ordinary Heritable Subjects. The special provisions regarding Adjudication of Heritable Securities contained in the branch of the Statute now under consideration deal simply with the Completion of the Title of the Adjudger after he has obtained his Decree. This he may do in one or other of the modes pointed out in § 129.

1. He may either record the Abbreviate of Adjudication in the appropriate Register of Sasines (as was originally provided by 8 and 9 Vict. c. 31, § 3), which Registration is to have the same effect as if, at the date thereof, the Adjudger had been entered and infeft on a Charter of Adjudication; or

2. He may record the Decree itself in the appropriate Register of Sasines (as was originally provided by 21 and

Security from which Executors have not been excluded. (*Vide supra*, p. 171.) The necessary variations to meet both cases are fully detailed in the Schedule.

(2) *Vide Supra*, p. 105, note (o). Strictly speaking, as an Adjudication for Debt is Redeemable until Decree of Expiry of the Legal, the whole subject of such Adjudications should have been reserved for this part of our Treatise. But as Adjudication in Implement confers an Irredeemable Right on the Adjudger, and as Adjudications for Debt are generally intended ultimately to transfer to the Adjudger the absolute ownership of the Lands adjudged, we have thought it right (following the course of the Framers of the Acts of 1847) to deal with Adjudications along with Irredeemable Rights.

22 Vict. c. 76, § 27), in which case he is to be in the same position as if an Assignment of the Security had been granted in his favour by the Ancestor or Person whose Estate is adjudged, and had been duly recorded in the appropriate Register of Sasines at the date of recording the decree.

(5) *Completion of Title to Security by a Judicial Factor.*

Where the Heritable Security forms part of the Estate under the management of a Judicial Factor, his Title thereto will be completed in the same manner as we have already shown his Title to ordinary Lands may be completed,^(a)

(6) *Completion of Title to Security by Trustee in Sequestration, or by Liquidators.*

Where the Security forms part of a Sequestered Estate, or of the Estate of a Joint-Stock Company under Liquidation, the Title of the Trustee or Liquidators is, by § 25, to be made up by a Notarial Instrument in the form of Schedule (LL).^(b) This Schedule is the same as Schedule (M) of 21 and 22 Vict. c. 76, and Schedule (I) of 23 and 24 Vict. c. 143.

2. *Completion of Title of Assignees and Successors inter vivos or mortis causa, where Security has not been Constituted by Infestment.*

Where the Security has not been constituted by Infestment during the Lifetime of the Grantee, we have seen that by § 120 (c) the security is to form a full and sufficient Warrant for the Completion of the Title of the party having Right thereto, as if it had been a Bond and Disposition in Security, containing Precept of Sasine and other Clauses in the ordinary form in use prior to 30th September 1847,

(a) *Vide supra*, p. 59.

(b) See *Appendix*, p. 129.

(c) *Vide supra*, p. 166.

“ which Title may be completed as after provided, or by Service or Notarial Instrument, as the circumstances of the case may equire.”

There can be no doubt that under ~~that~~ section a party in right of an Unrecorded Security,—whether by Service, or by Confirmation, or by Testament, or by General Disposition, or by Assignment, or in whatever other way,—may complete his Title thereto, as to any other lands, by an ordinary Notarial Instrument, which will be *mutatis mutandis* in the form of Schedule (J) or Schedule (L). The party, however, in Right of the Unrecorded Security may also avail himself of the provisions of § 130, which contains several enactments regarding the Completion of the Title to Securities in this position.

This section, which is based upon 17 and 18 Vict. c. 62, § 3, provides that—

“ In the event of an Heritable Security from which Executors shall not have been excluded, dated before or after the Commencement of this Act, not being constituted by Infertment during the Lifetime of the Grantee, or of any Assignment dated before or after the Commencement of this Act, of a Security from which Executors shall not have been excluded, but which has been constituted by Infertment, not being completed by Infertment during the Lifetime of the Assignee, and where such Grantee or Assignee shall be in Life at (d) the Commencement of this Act, such Security or Assignment shall form a Warrant for an Instrument in the form, or as nearly as may be in the form, of Schedule (MM)(e), hereto annexed, under the hands of a Notary-Public, being passed upon the same in favour of the Executors of the Creditor duly confirmed, whether the same be Executors-Nominate or Executors-Dative, or in favour of the Disponees or Assignees of such Security, or of the Moveable Estate of such Creditor under any Deed or Conveyance *inter vivos* or *mortis causa*, or in favour of any Legatees of such Security; and where such Executors or Disponees or Assignees, being more than one, shall not be entitled to such Security wholly for their own beneficial interest, it shall be competent to take such Notarial In-

(d) This Section would have been more distinct had the words “*or after*” been inserted here. The omission should be rectified in any amending Statute which may be passed.

(e) See *Appendix*, p. 130.

strument in favour of such Executors or Disponees or Assignees, and the Survivors or Survivor of them, unless such a Destination be expressly excluded by the terms of the Conveyance or Deed or Writing."

This branch of the Section, although somewhat obscurely expressed, deals with the case of the Security being Moveable as to Succession, either by the Creditor therein or Assignee thereof surviving the Commencement of the Act, without any exclusion of Executors having been thereafter made, or becoming the Grantee or Assignee of such a Security after the Commencement of the Act. In either case the Title may be completed in the form of Schedule (MM), which contains full directions for its adaptation to any of these cases.

The second branch of the section deals with the case in which the Succession to the Security is Heritable, in consequence of the Creditor either having died before the commencement of the Act, or having survived the Commencement of the Act, and excluded Executors in terms of § 117, or taken the Security to the Heir excluding Executors. In any of these cases it is provided that

"the Security or Assignment, as the case may be, shall form a Warrant for a Notarial Instrument as aforesaid" [also in the form of Schedule (MM)] "in favour of any Disponees or Assignees or Legatees of such Security, or of the *Heritable* estate of such creditor under any Deed or Conveyance by him *inter vivos* or *mortis causa*, or under any Testamentary Deed or Writing by him within the meaning of the 20th section of this Act, or in favour of the Heirs of such Creditor having right to the security by *Decree of General or Special Service* as Heir to such creditor."

The section concludes with a general enactment that on the Instrument being recorded in the appropriate Register of Sasines, whether in favour of Executors or Disponees or Assignees or Legatees or Heirs, the party in whose favour the Instrument is expedited and recorded shall be vested with the full right of the Creditor in the Security, and shall be held to be entered with the Superior in like manner and to the same effect as the Original Creditor himself.

(4) *Remedies of Creditors, &c., not to be affected by the Change of the Law as to Succession in Securities.*

As it was thought to be not impossible that the change of the character of the Succession to Securities from Heritable to Moveable might lead to questions regarding the Remedies of the Creditor and the liabilities of the Debtor, it is enacted by § 131 that

“Nothing contained in this Act shall affect or interfere with the present law and practice in regard to the Liability of the Lands contained in any Security, or of the Debtor, or with the Rights and Remedies of the Creditor, or of the Creditors of the Creditor.”

In short, the only change made upon the law is, that the Security on the death of the Creditor is, in the general case, to go not to his Heir-at-law but to his representative *in mobilibus*. The lands are still to be open to all manner of Diligence as before, such as an Action of Maills and Duties, Poining of the Ground, and the like. The Debtor (which term by the Interpretation Clause includes the Debtor's Successors) is to remain liable in the same manner and to the same extent as under the present law—that is to say, the debt is to form a Burden upon the Debtor and his Lands, and upon his Heir-at-law in the first instance; and the Rights and Remedies of the Creditor by Diligence already mentioned, and by all other Real Diligence competent to him at Common Law are to remain unaffected, as well as the Rights and Remedies of *his* Creditors—that is to say, the Creditors of the Creditor may attach the Security vested in his person by Adjudication, or in any manner competent under the present Law and Practice, even although such Creditor may have acquired the Security as an Executor or Legatee of the Original Creditor.

(III.) DISCHARGE, RENUNCIATION, AND RESTRICTION
ON HERITABLE SECURITIES.

(1) DISCHARGE AND RENUNCIATION OF SECURITY.

A short form of a Discharge of an Heritable Security was introduced by the Act 8 and 9 Vict. c. 31, in lieu of the long form previously in use, and has been re-enacted by § 132 of the present Act, which provides that any Heritable Security constituted by Infestment, and whether dated before or after the Commencement of the Act, may be effectually Renounced and Discharged, in whole or in part, and the Lands therein contained effectually Disburdened of the same, by a Discharge in the form or as nearly as may be in the form of Schedule (NN)(f) annexed to the Act, and by the Registration of such Discharge in the appropriate Register of Sasines.

The Schedule is very short and distinct, and requires no special explanation. It may, however, be observed that although in that part of the Schedule in which the Lands contained in the Security are mentioned, the direction is

“*[describe the lands]* all as specified and described in the said Bond and Disposition in security;”

it is not *necessary* to describe the lands at full length. It is no doubt competent to do so, but as under the Interpretation Clause of the Act the word “Deed” and the word “Conveyance” include

“All Deeds, Decrees, and Writings by which Lands or Rights in Lands are constituted, or completed, or conveyed, or *Discharged*, whether dated, granted, or obtained before or after this Act,”

and as § 11 of the Act applies to Deeds and Conveyances in their widest sense, and therefore *inter alia* to Discharges, the Lands mentioned in the Discharge may be described either by inserting the Description at full length, or by

(f) See *Appendix*, p. 180.

specifying, in terms of § 11, the leading Name or Names or some Distinctive Description of the Lands as contained in the Titles thereto, with the name of the County or Burgh, and referring to the particular description as contained in some prior recorded Deed in the form of Schedule (E). (g)

It should also be observed that in terms of § 17, where a Discharge is contained in a Deed relating to other matters, and it is not desired to record the whole Deed, a Notarial Instrument in the form of Schedule (J) (h) may be expedite and Recorded, setting forth the nature of the Deed, and the portion thereof by which the Lands are discharged. And similar Instruments may be expedite and recorded, where by the Deed separate interests are Discharged, and it is desired to record separately the Discharges of one or more of such interests. This provision as to Discharges is one of the new Enactments of the present Act. The Schedule (J) is not framed specially with a view to the Instrument being taken upon a Discharge, but it can be easily adapted to such cases.

(2) RESTRICTION OF HERITABLE SECURITY.

Under the present law a Deed of Restriction of an Heritable Security is an unnecessarily long document, narrating as it does at great length the Bond and Disposition in Security. The present Act, § 133, introduces a new form of a Deed of Restriction, which will be found in Schedule (OO), (i) and on the same being recorded the Security is to be restricted to the Lands contained therein other than the Lands discharged by the Deed of Restriction, and the Lands discharged are to be released from the Security to the same effect as if they had never been contained in it. The Schedule, although a new one, requires no comment, as it contains within itself full Direc-

(g) *Vide supra*, p. 87, and *Appendix*, p. 92.

(h) See *Appendix*, p. 96, and *vide supra*, p. 52.

(i) See *Appendix*, p. 131.

tions as to what it is to contain. The only observation which seems called for is that the Lands which are to be disburdened must be described at full length in order that it may clearly appear on the Record what the subjects are which are to be disburdened, a result which could hardly be attained by making use of the short Description authorised by § 11.

(IV.) GENERAL ENACTMENTS RELATING TO SECURITIES.

(1) *This Act to Apply to all Securities.*

§ 134 provides, as has been already mentioned, that the whole Provisions and Enactments and Forms of this Act relative to Bonds and Dispositions in Security are to apply, as nearly as may be, to *all* Heritable Securities, unless in so far as such Provisions, Enactments or Forms may be inapplicable to the Form or Object of such Security. This necessarily leaves considerable latitude to the Conveyancer, but it is thought that not much difficulty will be experienced in adapting the new and short Forms enacted by the present Act to all the Forms of Security which are at all likely to be used.

(2) *Old Forms may still be used.*

Following out the spirit of the system of Legislation which was commenced in 1845, and which, while introducing new Forms, does not absolutely abolish the old, except in the case of Brieves of Services, Signatures in Exchequer, Charges, and sundry other useless and obsolete procedure,—the Act (§ 135) provides that nothing therein contained shall prevent the Constitution, Transmission, or Extinction of Heritable Securities in the Forms in use prior to the 1st of October 1845. It is thus still competent to any person to take or transfer a Security in the Forms in

which the Bond and Disposition in Security, Sasine thereon, Disposition and Assignation thereof, Precept of *Clare Constat* by the *Debtor* in the Security, and the like, used to be granted before the Heritable Securities Acts of 1845 and 1847 were passed.

(3) *Fees of Town-Clerks in relation to Securities over Burgage Subjects.*

§ 136 provides that Town-Clerks who were in Office before 1st October 1845 or 30th September 1847 respectively, may, during the existence of their respective Rights of Office, exact and receive, under certain restrictions and modifications specified in the Section, the Fees in regard to Recording Securities over Burgage Subjects, Sasines thereon, or Assignations of Securities, or Abbreviates of Adjudication, and the like, to which they would have been entitled had this Act not been passed. The Section is a mere re-enactment of 8 and 9 Vict. c. 31, § 10, and of 10 and 11 Vict. c. 50, § 11, and calls for no special comment.

III.—GENERAL ENACTMENTS.

The Act concludes with several General Enactments, of which some are applicable to Deeds and Procedure falling under all or several of the previous Divisions and Subdivisions of the Act; others regulate matters connected with Land Rights, but not necessarily or naturally falling under any of these Heads; while others apply to Deeds of all kinds, whether relating to Lands or not.

(1) *The Act to apply to all Lands, by whatever Tenure held.*

§ 137 provides that the Act is to apply to all Lands by whatever Description of Tenure they may be held, unless in so far as any of the Provisions are limited expressly or by necessary implication to Lands held by one particular Tenure. This Clause has rendered it unnecessary to follow the plan, adopted in framing the Acts now repealed, of having separate Statutes for lands held by Burgage Tenure and for lands not held by Burgage Tenure. The cases, and they are now few, in which separate Provisions are required to be made for the case of Burgage Subjects are specially provided for in this Act, in all places in which such distinction appeared to be called for.

(2) *Short Clause of Registration for Preservation and Execution may be used in all Deeds.*

§ 138 re-enacts 23 and 24 Vict. c. 143, § 30, and provides that in *all* Deeds and Conveyances under this Act, as well as in all Deeds, Writings, or Documents, of whatso-

ever nature, *and whether relating to Lands or not*, the Short Clauses of Consent to Registration for Preservation, and for Preservation and Execution, contained in Nos. 1 and 2 of Schedule (B) annexed to this Act, shall, unless specially qualified, import a Consent to Registration and a Procuratory of Registration in the Books of Council and Session, or other Judge's Books competent, therein to remain for Preservation, and also, if for Execution, that Letters of Horning and all necessary Execution shall pass thereon upon Six days Charge upon a Decree to be interponed thereto in common form.^(a) It has been already explained (*supra*, p. 46) that by the "Land Registers Scotland Act 1868," Deeds, &c., recorded in the Register of Sasines for *Publication*, may also be recorded there for *Preservation* or for *Preservation and Execution*, provided the Warrant of Registration in the form No. 3 of Schedule (A) ^(b) of that Act written upon the Deed, &c., shall specify that they are to be so recorded.

(3) *Females may act as Instrumentary Witnesses.*

§ 139 makes it competent for females to act as instrumentary witnesses. We have already ^(c) explained this clause, and it is therefore unnecessary to repeat our observations thereon.

(4) *Additional Sheets may be added to Writs, &c., Engrossed on Deeds, &c.*

It is understood that doubts have been entertained in some quarters whether Writs, Assignations, &c.,—permitted or directed by the Titles to Land Acts of 1858 and 1860 to be engrossed on any Conveyance or Deed,—could competently be continued upon additional sheets in cases in which the Deed itself was not sufficiently capacious to contain the whole of the Writ, &c., requiring to be engrossed upon it. To us it has always appeared perfectly clear that, where necessary, Additional Sheets of paper,

(a) *Vide supra*, p. 27.

(b) See *Appendix*, p. 143.

(c) *Vide supra*, pp. 10, 27.

vellum, &c., might be added, and the Writ continued thereon. In order, however, to remove all doubt for the future, the present Act (§ 140) provides that such Additional Sheets may be added, provided the engrossing of the Writ is commenced in some part of the Conveyance or Deed itself. The clause is as follows :—

“§ 140. In all Cases where Writs or Deeds of any description are by this or any other Act permitted or directed to be engrossed on any Conveyance or Deed, it shall be competent, when necessary, to engross such Deeds or Writs on a Sheet or Sheets of Paper, or of whatever other Material the Conveyance itself consists, added to such Conveyance, provided that the Engrossing of the Deed or Writ shall be commenced on some part of the Conveyance or Deed itself on which it is permitted or directed to be engrossed ; and the first of such additional Sheets shall be chargeable with the Stamp-duty applicable to the Writ or Deed partly engrossed thereon, and subsequent Sheets (if any) shall be chargeable with the appropriate progressive Duty.”

It will be prudent in cases in which additional Sheets are used to state in the Testing Clause the part of the original Deed on which the Writ is commenced, *e.g.* :—

“ In Witness Whereof, these Presents, commenced on the back of the within Deed, &c. [*or on the margin of page of the within Deed, &c., or at the end of page of the within Deed, &c.*], and written thereon and on this and the preceding additional pages of stamped paper [*or Vellum, or as the case may be*] by M. N. [*design him*] are subscribed, &c.”

It will be seen that the Clause farther provides for the Stamp-duty payable on such additional Sheets.

- (5) *All Deeds, &c. recorded in the Register of Sasines to have Warrants of Registration thereon, except certain Burgage Deeds.*

§ 141 provides that all Deeds, &c., which are to be recorded in any Register of Sasines are henceforth, before being recorded, to have Warrants of Registration (in the form of Schedule (F) No. 2, or of Nos. 1, 2, or 3 of Schedule (H) of this Act) indorsed thereon, except certain deeds relating to Lands held by Burgage Tenure. We

have already explained the object and nature of this Enactment, which is a repetition of § 4 of the Land Registers (Scotland) Act 1868, and we refer the reader to our remarks thereon.(d)

(6) *Recording of Conveyances, &c., in Register of Sasines authorised.*

§ 142 is a re-enactment of 21 and 22 Vict. c. 76, § 19, and 23 and 24 Vict. c. 143, § 13, with some additions. It is a General Enactment, to the effect that all Conveyances and Deeds, and all Instruments authorised by the Act to be recorded in the Register of Sasines may, with Warrants of Registration written thereon, be recorded at any time in the Life of the Person on whose behalf the same shall be presented for Registration, in the same manner as Instruments of Sasine, or of Resignation and Sasine, or of Cognition and Sasine, or Notarial Instruments are at present recorded. This limitation is necessary to prevent Registration of a Deed or Instrument after the death of the party in Right thereof from having the effect of completing his Title if he had died uninfert. It is merely a continuance of the old Law, under which it was incompetent to Record a Sasine after the death of the party in whose favour it had been expedite. As, however, the Infertment Act of 1845 (8 and 9 Vict. c. 35, § 3) abolished the Ceremony of Delivery of Sasine, and made the Date of the Registration of the Sasine the Date of the Infertment, and allowed the Sasine to be recorded at any time during the Life of the party in whose favour it was expedite, in place of within sixty days of its date, as had previously been necessary, the present Act renews that useful provision, and extends it to all Deeds requiring to be registered in the Register of Sasines.

The Conveyance, or Deed, or Instrument, when pre-

(d) *Vide supra*, p. 43. Of course, where it is intended to Register the Deed in the Register of Sasines for Preservation, or for Preservation and Execution as well as for Publication, the Warrant of Registration must have the addition set forth in Schedule (A) No. 3, of the "Land Registers Act 1868." See *Appendix*, p. 143, and *supra*, p. 46.

sent for Registration, is to be shortly registered in the Minute Book of the Register, and with all due despatch fully registered in the Register Books, and thereafter re-delivered to the party with a Certificate of due Registration thereon, specifying the Date of Presentation, and the Book and Folios in which the Engrossment has been made. The Certificate is to be subscribed by the Keeper of the Register, and is to be probative of such Registration. Deeds, &c., so registered are in Competition to be preferable according to the Date of Registration, and the Date of Entry in the Minute Book is to be held to be the Date of Registration. It being now made competent by the Land Registers (Scotland) Act of 1868 to transmit Deeds, &c., by Post from the country to the Keeper of the General Register of Sasines, it is provided by § 142 of the present Act, which is a mere repetition of part of § 6 of the Land Registers (Scotland) Act 1868, that where

“two or more Deeds or Conveyances transmitted by Post in Terms of “The Land Writs Registration(e) (Scotland) Act 1868,” shall be received by the Keeper of the Register of Sasines at the same time, the Entries thereof in the Presentment Book and Minute Book shall be of the same Year, Month, Day, and Hour, and such Deeds and Conveyances shall be deemed and taken to be presented and registered contemporaneously; and Extracts of all such Conveyances or Deeds, Warrants of Registration, and Instruments so recorded,”

are to make faith in all cases where the principals themselves would have done so, except in cases of Improbation.

(7) *Conveyances, &c., may be Recorded of New.*

§ 143 re-enacts 23 and 24 Vict. c. 143, § 35, and provides that in the case of any error or Defect in any Instrument, or of the Recording of any Deed or Conveyance or Instrument, or in any Warrant of Registration, or in the Recording thereof, it shall be competent of new to make and

(e) The Title of this Act was originally intended to be ‘*The Land Writs Registration (Scotland) Act 1868*,’ and it is so termed in this section. The incorrectness of the citation of the Act is of no moment, as the Lands Registers Act contains the same proviso. See *Appendix*, p. 135.

record the Instrument,—or of new to record the Deed or Conveyance, with the original or a New Warrant of Registration.

(8) *Recorded Instruments not to be challenged on the ground of Erasures.*

§ 144 re-enacts 21 and 22 Vict. c. 76, § 23, and 23 and 24 Vict. c. 143, § 19, and provides that the Act 6 and 7 Gul. IV. c. 33, as to Erasures in Instruments of Sasine and of Resignation *ad remanentiam*, is to extend to and be applicable to *all Instruments*.^(f) The Act of King William referred to provided that Erasures in such Instruments made before Registration in the Register of Sasines should not affect their validity, provided the words written on the erasure tallied with those appearing in the Register.

(9) *Existing Warrants of Registration not to be challenged on certain grounds.*

§ 145 provides that it is not to be competent to challenge *Existing* ^(g) Warrants of Registration in respect of certain supposed irregularities in the way in which the Agents signing the same may have designed themselves. The nature and effect of the provisions of this Section have been already fully explained,^(h) but we repeat that these are merely retrospective, and that *future* Warrants must be strictly in the form enacted by this Act.

(10) *Real Burdens, &c., appointed to be inserted in Instruments of Sasine, &c., shall be inserted or referred to in Notarial Instruments.*

§ 146 re-enacts 21 and 22 Vict. c. 76, § 29, and 23 and

(f) By the Interpretation Clause, 'Instruments' are to extend to and include 'All Notarial Instruments authorised by this Act, or by any of the Acts hereby repealed, and also all Instruments of Sasine, Instruments of Resignation *ad remanentiam*, Instruments of Resignation and Sasine, and Instruments of Cognition and Sasine, and Instruments of Cognition.'

(g) That is Warrants so recorded before the commencement of the present Act.

(h) *Vide supra*, p. 45.

24 Vict. c. 143, §§ 17 and 31, and provides that all Real Burdens, Conditions, and the like, which are appointed by any Statute or prior Deed, to be inserted or referred to in Instruments of Sasine or of Resignation *ad remanentiam*, or other Instruments applicable to Lands, may be either inserted or referred to in the manner provided by this Act (that is, in terms of § 9 or 10) in every Instrument applicable to

“such Lands to be expedite in virtue of this Act, and in every Conveyance or Deed of or relating to such Lands, the Registration of which in the Register of Sasines is by this Act equivalent to Infestment or Resignation *ad remanentiam*.”

The General Term “*Real Burdens, Conditions,*” &c., to which this section applies, will include the Prohibitory, Irritant, and Resolutive Clauses of a Deed of Entail and the Clause for Registration in the Register of Tailzies.

(11) *Prohibition against Subinfeudation not to be affected.*

§ 147 re-enacts 21 and 22 Vict. c. 76, § 28, and is a General Enactment to the effect that where the Investiture of any Lands has imposed or shall impose a Prohibition against subinfeudation, or against Alternative Holding, nothing in the Act is to operate to authorise Subinfeudation or Alternative Holding in respect of such Lands, and nothing in the Act is to be construed to take away or impair any of the Rights or Remedies competent to a Superior against his Vassal lying out unentered.

The object of this Clause is to prevent the Rights of Superiors from being injuriously affected by the 6th Section of the Statute, which declares the effect of the Clause of a Conveyance expressing the Manner of Holding, and the effect of a Conveyance in which no Manner of Holding is expressed; and it is also intended to prevent the Rights of Superiors from being affected by the General Enactments contained in § 19 as to the effect of a Notarial Instrument in favour of a General Disponee,—in §§ 46 and 62 as to the effect of a Decree of Special Service, and of a Decree of Adjudication respectively,—and in §§ 24 and 25,

which provide short modes of completing Titles by Judicial Factors, Trustees on Sequestrated Estates, &c.(i)

(12) *In Questions under the Bankrupt Acts, Dates of Registration to be held to be the Dates of the Conveyance, &c.*

§ 148 re-enacts 8 and 9 Vict. c. 31 § 7; and extends its application to Recorded Conveyances. It provides that in all questions under the Bankrupt Statutes—beginning with 1696, c. 5, and ending with the 19 and 20 Vict. c. 79—the dates of the Registration of all Conveyances and Deeds or Discharges granted or taken in pursuance of the Act shall be held to be the dates of such Conveyances or Deeds and Discharges respectively, without prejudice to their validity or invalidity in other respects. Registration, of course, here means Registration in the Register of Sasines.

(13) *Deeds, &c., may be partly Written and partly Printed, Engraved, or Lithographed.*

§ 149 re-enacts and extends, and in some respects alters, 21 and 22 Vict. c. 76, § 34, and of 23 and 24 Vict. c. 143, § 20, and provides that Deeds and Instruments may be partly Written, and partly Printed, or Engraved, or Lithographed.

(1) The provision now extends to

“all Deeds and Conveyances, and all Documents whatever, mentioned or not mentioned in this Act, *and whether relating or not relating to Land*, having a Testing Clause.”

Such Deeds, &c., may be partly Written and partly Printed or Engraved or Lithographed. The former Acts were so expressed as to raise doubts (for which however we never saw any ground) as to whether the provisions extended to Deeds, &c., not connected with Land, or to Deeds, &c., partly Written and partly *Lithographed*.

(2) It is now provided that in the Testing-Clause the Date, if any, the Names and Designations of the Witnesses,

(i) *Vide supra*, pp. 23, 60, 63, 92, and 107.

and the Number of the Pages, if the number be specified, and the Name and Designation of the Writer of the Written Portion of the body of the Deed, or Conveyance, or Document, shall be expressed at length; and all such Deeds, &c., shall be as valid and effectual as if they had been wholly in Writing. The former Statutes provided that the Name and Designation of the Writer *of the Written Portions of the Testing-Clause*, as well as of the Body of the Deed, &c., should be expressed at length in Writing. This provision went beyond the requirements of the Common Law, by the rules of which it is not necessary to name or design the Writer of the Testing-Clause, and it has therefore not been repeated in the present Act; but as cases may have occurred in which, from oversight, the Writer of the written portion of the Testing-Clause of Deeds, &c., partly written and partly printed, and executed under the Acts of 1858 and 1860, was not named or designed, § 149 concludes with a declaration,

“that no such Deeds, Conveyances, and Documents executed prior to the Commencement of this Act shall be challengeable on the ground that the Name of the Writer of the Written Portions of the Testing Clause is not mentioned.”

(14) *Debts affecting Lands exchanged for other Lands to affect such other Lands in lieu thereof.*

§ 150 re-enacts 23 and 24 Vict. c. 143, § 28. Its object is to save expense and facilitate the procedure in Excambions of Estates where one or both are held under Deeds of Entail, and are burdened with Debts, and where the Excambion is being carried through under the Provisions of any Private Estate Act, or of any of the Entail Statutes.

The section provides that where Lands disposed before or after the Commencement of the Act

“under the authority of an Act of Parliament,”

in Excambion for other Lands, are burdened with Debts, the Lands so disposed shall, from and after the date of Registration in the appropriate Register of Sasines of the Contract or Deed of Excambion, be freed and disburdened

of such Debts, but shall, on the other hand, be burdened with the Debts, if any, which previously affected the Lands acquired in exchange for the same

“ in the order of Preference in which such Debts were a Burden upon such last mentioned Lands.”

But it is provided that in the case of Excambions of such Lands after 31st December 1868, and in order to prevent the interests of the Creditors in any of these debts from being prejudiced thereby, the Court of Session shall (in addition to the procedure required by the Special Act under which the Excambion takes place) order such intimation as they shall consider necessary to be made to all Creditors having interest in the Debts that they may appear and object if they so desire. And in the Contract or Deed of Excambion, or in a Schedule subscribed as relative thereto, and declared to be part thereof, and recorded therewith, the particulars of the Debts, and of the Securities constituting them, and of the Registration thereof, are to be set forth, and the Contract or Deed of Excambion must expressly declare these Debts to burden the Lands to which the same are transferred.

(15) *Provision as to Preparing and Recording Deeds, &c., relating to Lands held Burgage in Burghs where no Burgh Register of Sasines is kept.*

§ 151 re-enacts 23 and 24 Vict. c. 143, § 22. It provides that in those Burghs in Scotland, in which no Burgh Register of Sasines is kept, the Warrant of Registration of any Conveyance or Deed of Burgage Lands of such Burgh must be subscribed or indorsed with the Signature of the Town-Clerk of the Burgh, on payment to him of certain Fees, before being recorded in the Register in which such Writs fall to be registered. This privilege, however, is confined to those Town-Clerks who were in office before 8th March 1860, and who are to enjoy the privilege during their respective Tenures of Office, and no longer, it being by § 153 enacted that no Town-Clerk appointed after that date shall

“have any exclusive Right or Privilege of preparing or expediting any Conveyance or Deed of or relating to Land, or shall have any Right to Compensation in respect of any Alterations affecting the Rights, Duties, or Emoluments of Town-Clerks, which may be made by this Act or any Act which may hereafter be passed.”

(16) *Regulation as to Fees of Town-Clerks.*

We have already pointed out (k) that § 136 provides for the Fees of Town-Clerks of Burghs in connection with Heritable Securities over Burgage Subjects. §§ 151 and 153 contain Regulations as to the Fees of Town-Clerks in connection with all Deeds relating to such Subjects. These are generally to the effect that, as regards such Fees, the exclusive Privilege of Town-Clerks to prepare such Writs being now abolished, existing Town-Clerks are to be entitled, during the Subsistence of their respective Offices, but no longer, to receive certain Fees, the amount of which is regulated by the Sections referred to, which need not here be specified in detail.

(17) *Provision for Lands held in the Burgh of Paisley by Booking Tenure.*

§ 152 re-enacts 23 and 24 Vict. c. 143, § 23, and declares that all the provisions of the Statute applicable to Lands held by the ordinary Burgage Tenure are to be applicable also to Lands held in Paisley by the peculiar Tenure of Booking; but it is still to be competent to constitute, transmit, or complete Rights to Lands held by Booking Tenure in the forms hitherto competent.

(18) *Official Acts of Town-Clerks and Keepers of Registers of Sasines not to be affected by their personal interest in Writs recorded by them.*

Before the Act 23 and 24 Vict. c. 143, it was incompetent for any Town-Clerk who had a Personal Interest in any Right relating to Burgage Lands to prepare or record

(k) *Vide supra*, p. 181.

any Writ relating to such Lands; and a similar disqualification attached to the Keeper of any Register of Sasines who had a Personal Interest in Lands affected by any Writ recorded by him in the Register kept by him. § 26 of that Act, which is re-enacted by § 154 of the present Act, removed this Personal Objection, which in practice was found to be extremely inconvenient; and it is now competent for the Town-Clerk of any Burgh to expedite and record, and for the Keeper of any Burgh or other Register of Sasines, Reversions, &c., to record any Conveyance or Deed in which such Town-Clerk or Keeper may be personally interested, either individually or as Trustee for another, or otherwise,—the Personal Interest of such Town-Clerk or Keeper being declared to be no longer any Ground of Challenge of the Conveyance or Deed so expedite or recorded, whether prior to or subsequent to the passing of the present Act. The enactment, however, is not to prejudice or to affect any Action or Proceeding which may have been instituted prior to the passing of the Act.

(19) *Provisions of the Statute as to Inhibition.*

We have already (l) explained the inconvenience and risk arising from the existing law and practice as to Inhibitions, and the Remedies and Improvements enacted by the Legislature during the past Session of Parliament. Referring to these general remarks, we shall briefly notice the Special Provisions of each of the several Statutes passed during 1868 with reference to Inhibitions.

These are contained in §§ 155, 156, 157, and 158 of the Present Act, and in various Sections of the "*Land Registers (Scotland) Act 1868*," 31 and 32 Vict. c. 64, and in the "*Court of Session (Scotland) Act 1868*," 31 and 32 Vict. c. 100, § 18.

(1) *Particular Registers of Inhibitions abolished, and General Register now the only competent Register.*

The Land Registers Act,(m) in so far as it relates to

(l) *Vide Supra*, p. 14, *et seq.*

(m) See *Appendix*, p. 139.

Inhibitions, deals chiefly with the Official Establishment for the Registration of Inhibitions. § 16 abolishes the Particular Registers of Inhibitions throughout Scotland, and makes the General Register of Inhibitions in Edinburgh the only competent Register for Diligence of that description. That Register is, by § 17,⁽ⁿ⁾ to be combined with the General Register of Hornings and Adjudications, and only one Minute Book is to be kept for Inhibitions and Adjudications, and also for Reductions as after mentioned; and only one Index is to be framed applicable to all Inhibitions, Adjudications, and Reductions so recorded. It is also provided, by § 18 of the Land Registers Act,^(o) that where any Register has been kept as a Joint-Register of Hornings and Inhibitions, it is to cease to be a competent Register for Registration of Inhibitions.

(20) Office of Keeper of Register of Inhibitions, &c., to be United with that of Keeper of Register of Sasines.

The office of the Keeper of the General Register of Hornings, Inhibitions, and Adjudications is now, by § 20^(o) of the "Land Registers Act," to be united with the office of the Keeper of the General Register of Sasines, and after the termination of the present existing interest in the office of the Keeper of the General Register of Sasines, or when the said office shall become vacant, his successors shall hold no other office, and shall not, directly or indirectly, by himself or any other person, be engaged in practice before the Superior or any Inferior Court, or transact any business for profit other than the business devolving on him as the Keeper of the Register.

(21) Form of Inhibition.

Neither the present Act nor the other Statutes referred to abolish the existing forms of Letters of Inhibition, but the present Act ^(p) provides a short form of such Letters,

⁽ⁿ⁾ See *Appendix*, p. 139.
^(o) See *Appendix*, p. 140.

^(p) The Act, § 156.

which will be found in Schedule (QQ).(q) The form is very concise,—containing simply the Name and Designation of the Inhibitor, the Name and Designation of the Party Inhibited, and a short narrative of the Document on which the Inhibition proceeds, and concluding with the “Will,” which is as follows :—

“Our Will is Herefore, and We Charge you that ye lawfully Inhibit the said *C.D.* personally or at his Dwelling-place if within Scotland, and if furth thereof at the Office of the Keeper of the Record of Edictal Citations at Edinburgh, from Selling, Disposing, Conveying, Burdening, or otherwise affecting his Lands or Heritages to the prejudice of the Complainer ; and that ye Cause Register these our Letters and Execution hereof in the General Register of Inhibitions at Edinburgh for Publication to our Lieges. Given under our Signet at Edinburgh this day of , in the year .”

This form of Inhibition will in all probability be the form generally adopted where the diligence proceeds on a Liquid Ground of Debt, such as a Protested Bill, or on a Decree of the Court, or on a Decree of Registration. Although it is competent to use *Letters of Inhibition* on a Depending Summons either in the new form or in the old form, Inhibitions proceeding on such a summons will hereafter generally be in the form provided by the “Court of Session Act 1868,” § 18, which makes it competent to insert in the Will of the Summons a *Warrant of Inhibition*, which is to have all the like force and effect as Letters of Inhibition in the form in use at the passing of that Act, and which is to be as nearly as may be in the following form :—

“and also that ye lawfully Inhibit the said Personally or at his Dwelling-place, if within Scotland, and if furth thereof, at the Office of the Keeper of the Record of Edictal Citations at Edinburgh, from Selling, Burdening, Disposing, Alienating or otherwise affecting his Lands or Heritages to the prejudice of the Pursuer, and that ye cause Register this Summons and Execution hereof in the General Register of Inhibitions at Edinburgh for Publication to our Lieges.”

(q) See *Appendix*, p. 132.

It will be seen that this form of "Warrant of Inhibition" is substantially the same *mutatis mutandis* with the Will of the Letters of Inhibition in Schedule (QQ) of the present Act, with this difference, that instead of the word "Conveying," which occurs in Schedule (QQ), the word "Alienating" is introduced in the Warrant inserted in the Summons, and that what is to be Registered is the Summons and execution thereof, not simply the Warrant of Inhibition contained in the Will. The Condescendence and Note of Pleas in Law annexed to the Summons are not required to be registered.

(22) *Publication of Inhibitions.*

We have already explained^(r) the former unsatisfactory method of Publishing the Diligence of Inhibition to the Lieges, and the dangers to which parties onerously transacting with Owners of Lands were exposed, from the possibility of the existence of latent Inhibitions not appearing on the Record, and of which they had and could have no knowledge. No such danger can occur in future, because it is provided by the present Act, § 155, that before or after the Execution of any Inhibition, whether by separate Letters or contained in a Summons before the Court of Session, a "Notice" may be Registered in the General Register of Inhibitions setting forth the Names and Designations of the persons by and against whom the Inhibition is used, and the Date of Signeting the same, in the form or as nearly as may be in the form of Schedule (PP) annexed to the Act.^(s) The form of the Notice is very short, and it is in these terms:—

"Notice of Letters of Inhibition [*or of Summons containing Inhibition, as the case may be*], A.B. [*insert Designation of the Inhibitor*] against C.D. [*insert Designation of the Inhibited*]. Signeted [*insert date of signeting*]. (Signed) E. F., W.S. [*or S.S.C.*], Agent."

But while the Lieges are thus protected against latent Inhibitions, the Registration of the Notice enables the

(r) *Vide supra*, p. 14.

(s) See *Appendix*, p. 132.

Inhibitor to have the full benefit of his Diligence immediately after signeting the Inhibition, and prevents him from suffering from the unavoidable delay in executing it ; and accordingly the same section (§ 155) provides that where any such Inhibition and the Execution thereof shall be duly registered in the Register of Inhibitions not later than Twenty-one Days from the Date of the Registration of such Notice, the Inhibition shall take effect from the Registration of such Notice,—but if the Inhibition itself and the Execution thereof be not registered until after the lapse of the Twenty-one days, the Inhibition is to take effect only from the Registration of the Inhibition itself and the Execution thereof, and

“no Inhibition shall have any effect against any Act or Decree done, committed, or executed prior to the Registration of such Notice thereof, or of such Inhibition and the Execution thereof, as the case may be.”

The effect of this enactment is, on the one hand, that no person who chooses to search the Register of Inhibitions can be injuriously affected by any Inhibition which, or a Notice of which, is not recorded in the Register at the time of the search ; while, on the other hand, the Inhibitor can protect his own interests without, as has hitherto frequently happened, doing injustice to parties onerously transacting with his Debtor.

As has been already noticed,^(t) the old form of the Publication of the Inhibition at the Market-Cross of the Head Burgh of the County where the Debtor resided, and at the Pier and Shore of Leith, is dispensed with—although not actually abolished—both by the Land Registers Act 1868, § 16, and by the Court of Session Act 1868, § 18. The former Statute provides that

“no Publication whatever of such Diligences, Executions, and other Writings, other than Registration in said General Register of Inhibitions, shall in future be necessary, but such Registration shall, for all purposes whatsoever, have all the legal effect of the Publication at present in use.”

(t) *Vide supra*, p. 14.

And the Court of Session Act provides, by § 18, that

“ when Warrant of Inhibition is contained in the Will of a Summons passing the Signet, such Warrant may be executed either at the same Time as the Summons is served or at any Time thereafter, and it shall not be necessary to Publish such Warrants, or to intimate Letters of Inhibition passing the Signet, to the Lieges in any other way than by Registration in the General Register of Inhibitions, and in registering it shall be sufficient to register the Summons, including the Warrant of Inhibition, and the Execution of such Warrant without Registering any Condescendence or Note of Pleas in Law which may follow the Summons, or where Letters of Inhibition are used, then such Letters, with the Execution thereof, shall be Registered ; and from and after Registration as aforesaid, the Inhibition, whether contained in a Summons or by separate Letters of Inhibition, shall be held to be duly Intimated and Published to all concerned.”

These enactments greatly enhance the value of the Public Registers, by making Registration therein the only method of Publication of the Diligence of Inhibition to the Lieges and all concerned.

(23) *Inhibitions not to affect Acquirenda unless where the party succeeds to Lands held under Entail, &c.*

Future Inhibitions are by the Act (*u*) declared to have no force or effect against *acquirenda* by the person or persons Inhibited, after the Date of the Recording the Inhibition or Notice thereof, except such Lands as were at the date of such Registration destined to the person inhibited by a Deed of Entail or a similar Indefeasible Title. The object of this exception from the enactment as to *acquirenda* (which is a new one) is to enable Creditors, who may have lent money to an Heir of Entail on his expectations, to protect themselves against the loss which they might otherwise sustain by the Heir, after succeeding to the estate, alienating his Life interest or Disentailing the Estate to their prejudice.

(24) *Inhibitions affect Heritage only—not Moveables.*

It will be seen from the Schedule (QQ) that the Inhi-

(*u*) The Act, § 157.

bition is now in form entirely restricted to Heritage. In practice Inhibitions have been so restricted, although the form of the Diligence hitherto in use included Moveables as well as Heritage.

(25) *Recall of Inhibition on Depending Summons.*

§ 158 provides a simple method of Recalling or Restricting an Inhibition on a Depending Summons by Petition to the Lord Ordinary in the Court of Session, before whom the Summons containing the Warrant, or on the Dependence of which Inhibition has been used, may have been enrolled, or to the Lord Ordinary on the Bills during vacation, with or without caution, but subject to the review of the Court. This useful provision is similar to that for Recall of Arrestments contained in the Personal Diligence Act, 1 and 2 Vict. c. 114.

(26) *Litigiosity not to begin before Date of Registration of Notice of Summons.*

Litigiosity has hitherto been held to be created by the Execution of a Summons of Adjudication or of Diligence against a Debtor for the purpose of attaching his estate ; but as no provision has hitherto been made for the Publication of such Proceedings to the Lieges, great injustice has often been done by an Owner of Lands onerously selling or burdening his Estate after the commencement of proceedings which were unknown to the party with whom he had thus onerously transacted, and whose Purchase or Security has afterwards been set aside as inept on the ground of Litigiosity. The present Act *(v)* removes this blemish from our system of Registration. It provides that no Litigiosity is to be created as regards any Lands embraced or referred to in any Summons of Reduction, or of Adjudication, or of Constitution and Adjudication combined, for Debt, or in Security, or in Implement, unless a Notice of the Signeting of the Summons, in the short form given in Schedule (RR), *(w)* is registered in the Register of In-

(v) The Act, § 159.

(w) See *Appendix*, p. 132.

hibitions in the case of Reduction, and in the Register of Adjudications in the case of the other Summonses mentioned, and the Litigiosity is only to commence from the date of the Registration of such Notice.

(27) *Right to Heirship Moveables Abolished.*

§ 160 abolishes the Right of the Heir of Line to a party deceased to claim in that character any portion of the Moveable Estate of his Predecessors as Heirship Moveables.

(28) *Review of Judgments pronounced in virtue of the Statute.*

§ 161 is a general enactment providing for the review in certain cases of Judgments of the Lord Ordinary by the Inner House of the Court of Session, and of Judgments of the Court of Session by the House of Lords. We have already (x) explained the provisions of the Statute as to the Review, and the Finality of Judgments of the Lord Ordinary, or of the Court of Session, in all proceedings coming before them by way of Appeal, Advocation, or Reduction, in connection with Services of Heirs. Various other judgments, however, may be pronounced by the Lord Ordinary or by the Court of Session in pursuance of this Act—viz., in adjusting Crown Charters, in pronouncing Decrees of Constitution, and of Adjudication, and the like. In all these cases the Judgment pronounced by the Lord Ordinary is to be subject to review by Reclaiming Note in ordinary form, and the Judgment of either Division of the Court upon such Reclaiming Note is to be subject to Review by Appeal to the House of Lords, or in any other competent mode or form.

The Judgment of the Lord Ordinary in Petitions relating to the Forfeiture and Relinquishment of Superiority if not brought under Review by Reclaiming Note, and the Judgment of either Division of the Court of Session upon such Reclaiming Note against such Judgment of the Lord

(x) *Vide Supra*, p. 89.

Ordinary, whether such Judgment shall have been pronounced in absence of the Respondent or not, shall be Final and Conclusive and not subject to Review in any mode or form whatever. Under this *proviso* appeal to the House of Lords in such questions is absolutely excluded.

(29) *Court of Session to frame Acts of Sederunt.*

§ 162 is a general enactment giving power to the Court of Session, from time to time, to pass Acts of Sederunt regulating Fees payable to Town-clerks and Keepers of Registers of Sasines in Burghs, and also to pass all such Acts of Sederunt and Rules of Court as they may deem proper for carrying into effect the Purposes of the Act; but it is provided that, until such Act or Acts or Rule or Rules of Court shall be passed, all Acts of Sederunt and Rules of Court now in force passed under the authority of any of the repealed Acts, and all Tables of Fees thereby sanctioned, are to remain in force as Acts of Sederunt, Rules of Court, and Tables of Fees for the purposes of this Act. We have already, in dealing with the various Branches into which we have subdivided the Statute, pointed out the particular Provisions for Acts of Sederunt, &c., being passed relative to the subject matters of each Branch.

(30) *Old Forms of Conveyancing still to be competent.*

§ 163 enacts that nothing contained in the Act is to prevent the Constitution, Transmission, Completion, or Extinction of Land Rights, or of Securities affecting Lands, in the Forms in use prior to the passing of the Repealed Acts, except in so far as such prior Forms are by this Act expressly abolished. The Forms, &c., which have been expressly abolished are the Brieve of Service and the Procedure under it; the Charges which were necessary as preliminary to Summonses of Constitution and Adjudication; the Procedure by Signature in Exchequer for obtaining Crown Writs; and the Ceremony of Resignation. With these exceptions, it is still competent to use any of the old stereotyped forms of Conveyancing which had

for centuries been in force in this country until the process of curtailment and simplification began in 1845; and the Act (§ 163) concludes with a *Proviso* that, notwithstanding the Repeal of the Acts in Schedule (A),

“the same shall be held to be still in force so far as regards any Reference which may be made to them or any of them in any Statute not hereby repealed, and to the effect of giving full Effect to such Reference.”

The object of this *Proviso* is to prevent any Statute passed prior to the present Act, but making Reference to the Procedure under any of the Repealed Acts, from being rendered nugatory in consequence of such Repeal. An instance in which this might have happened is to be found in the Trusts (Scotland) Act 1867,^(y) where the Warrant to be given by the Court to New Trustees, or to Beneficiaries under Lapsed Trusts, to make up Titles to the Heritable property forming part of the Trust-estate, or to which such Beneficiaries have become beneficially entitled, is declared to have the same Effect as a Warrant in favour of a Judicial Factor granted under the authority of the 38th Section of the Titles to Land (Scotland) Act 1860;^(z) and it is believed that similar references to the repealed Statutes are made in other Acts of Parliament.

(y) 80 and 81 Vict. c. 97, §§ 12 and 14.

(z) No such question can in this particular instance arise, as by § 24 of the present Act, which provides for the Completion of Titles by a Judicial Factor, it is provided that the Section shall apply to all Petitions and Warrants under the Trusts Act of 1867, in so far as not inapplicable to the forms and objects of such Petitions or Warrants.

IV.—SCHEDULES.

The Schedules annexed to the Act are all printed at full length in the Appendix, p. 84 to 132. The remarks which we have made upon these Forms, in explaining the Sections of the Statute by which they are enacted, renders any further notice of them unnecessary. We have, however, given on pp. 145 *et seq.* of the Appendix a Form of a Bond and Disposition in Security, framed to meet the difficulty pointed out in Note (*h*), pp. 160 and 161, *supra*; and Forms of Minutes of Exclusion of Executors in a Security, and of Removal of such Exclusion,—with reference to our remarks on pp. 154 and 155, *supra*.

APPENDIX.

APPENDIX.

No. I.

TITLES TO LAND CONSOLIDATION (SCOTLAND) ACT 1868.

31 AND 32 VICT., c. 101.

ARRANGEMENT OF CLAUSES.

SECTION	APPENDIX, page
1. Short Title,	1
2. Commencement of Act,	1
3. Interpretation Clause,	1
4. Acts specified in Schedule (A) repealed,	4

I. IRREDEEMABLE RIGHTS.

1. FORMS OF TITLES EMPLOYED IN CONSTITUTING AND TRANSMITTING SUCH RIGHTS, AND IN COMPLETING DISPONEE'S TITLE BY INFECTMENT OR ITS EQUIVALENT.

5. In Conveyances of Land, &c., not held Burgage, certain Clauses may be inserted in the short Forms given in Schedule (B) No. 1,	4
6. Import of Clause expressing Manner of holding,	5
7. In Conveyances of Burgage Property certain Clauses may be inserted in the Forms given in Schedule (B) No. 2,	6
8. Import of Clauses in Schedule (B) Nos. 1 and 2,	6
9. Conditions of Entail may, in Conveyances of Entailed Lands, be inserted by Reference merely, Schedule (C),	7
10. Real Burdens may be referred to as already in the Register of Sasines, Schedule (D),	8
11. Description of Lands contained in recorded Deeds may be inserted in subsequent Writs by Reference merely, Schedule (E),	8
12. Clause directing Part of Conveyance to be recorded, Schedule (F) Nos. 1 and 2,	9
13. Several Lands conveyed by the same Deed may be comprehended under One general Name, Schedule (G),	10
14. Certain Clauses in Entails no longer necessary.	10

ARRANGEMENT OF CLAUSES.

iii

SECTION	APPENDIX, page
15. Instrument of Sasine no longer necessary, but Conveyance may be recorded instead, Schedule (H) Nos. 1 and 2, . . .	11
16. Mode of expediting Sasine in Lands holden Burgage, Schedule (I), . . .	11
17. Not necessary to record the whole Conveyance or Discharge, Schedule (J), . . .	12
18. Instrument of Resignation <i>ad remanentiam</i> unnecessary, but in place thereof Conveyance in favour of Superior may be recorded, Schedule (K), . . .	13
19. Notarial Instruments in favour of general Disponees, Schedule (L), . . .	14
20. <i>De presenti</i> Words, or Words of Style, unnecessary in <i>mortis causa</i> Deeds, . . .	15
21. Trustee or Executor to apply Lands for Purposes of Trust or Will, . . .	15
22. Assignations to unrecorded Conveyances, Schedule (M) Nos. 1 and 2, . . .	16
23. Notarial Instruments in favour of Parties acquiring rights to unrecorded Conveyances, Schedules (J) and (N), . . .	17
24. Mode of completing Title by a Judicial Factor on a Trust-Estate, &c., . . .	18
25. Mode of completing Title by a Trustee in a Sequestration, and by Liquidators of Joint Stock Companies, . . .	18
26. Heritable Property conveyed for Religious or Educational Purposes to vest in Disponees or their Successors, Schedules (O) and (LL), . . .	19

II. SERVICES OF HEIRS.

27. Services to proceed by Petition to the Sheriff, . . .	20
28. Petition to be presented to the Sheriff of the County or to the Sheriff of Chancery, . . .	20
29. Nature and Form of Petition, Schedules (P) and (Q), . . .	21
30. Services not to proceed till Publication be made, . . .	21
31. Caveats to be received, . . .	22
32. Petition of Service to be equivalent to a Brieve and Claim, . . .	22
33. Procedure before the Sheriff, and the Effect of his Judgment, . . .	22
34. Case where Domicile of Party is unknown, . . .	23
35. Competing Petition may be presented, and Sheriff, after receiving Evidence, give Judgment, . . .	24
36. Recording and Extract of Judgment, . . .	24
37. The Extract Decree to be equivalent to an Extract Retour, . . .	25
38. Transmission of Records, . . .	25
39. Clerks of Chancery to be remunerated for keeping Register, &c., by Act of Sederunt, . . .	26
40. No person entitled to oppose a Service who could not appear against a Brieve of Inquest, . . .	26
41. Appeal for Jury Trial, . . .	26
Where Sheriff refuses to serve Petitioner, &c., Judgment may be reviewed, . . .	27

iv TITLES TO LAND CONSOLIDATION (SCOTLAND) ACT 1868.

SECTION	APPENDIX, page
43. Procedure when a Decree of Service is brought under Reduction. Effect of the Decree of Reduction,	28
44. Forms and Effect of Procedure in the Court of Session,	29
45. "Court of Session Act 1868," to apply to Appeals and Reductions, &c., under this Act,	29
46. A decree of Special Service, besides operating as a Retour, shall have the Operation and Effect of a Disposition from the De- ceased to his Heirs and Assignees. [i.e., to the Heir so served and his Assignees],	29
47. A Special Service not to infer a general Representation, either ac- tive or passive,	31
48. Petitioner for Special Service may petition for General Service,	32
49. A General Service may be applied for and obtained to a limited Effect by annexing a Specification ; and it shall infer only a limited passive Representation, Schedule (R) Nos. 1 and 2,	32
50. Jurisdiction of the Sheriff of Chancery,	32
51. Power to the Court of Session to pass Acts of Sederunt,	33
52. Appointment of Sheriff of Chancery,	33
53. Agents may practise before Sheriff-Courts,	33
54. Salaries of Sheriff of Chancery and Sheriff-clerk of Chancery,	34
55. Salary to be regulated by the Commissioners of the Treasury on Vacancy,	34
56. Compensation already awarded not to be affected,	34
57. Compensation to be paid,	34
58. Provisions as to depending Petition for Service,	34
III. COMPLETION OF TITLE OF ADJUDGER.	
59. Unnecessary to libel and conclude for Decree of Special Adjudi- cation,	35
60. General, and Special, and General Special Charges to be no longer necessary	35
61. Actions of Constitution and Adjudication against Apparent Heir may be insisted in after the Lapse of Six Months,	37
62. Effect of a Decree of Adjudication or Sale,	37
IV. COMPLETION OF TITLE WITH SUPERIOR.	
<i>Entry with the Crown.</i>	
63. Signatures for Crown Writs abolished, Schedule (S),	38
64. Crown Writs to be obtained by lodging a Draft thereof and Note along with the Title-Deeds,	38
65. Draft Crown Writ to be revised,	39
66. Rectification of Mistakes in former Titles,	39
67. Intimation of proposed Rectification to be made to Solicitor for Commissioners of Woods and Forests,	40
68. Presenter of signatures, &c., may refer to Copy of Writ when with- held,	40

ARRANGEMENT OF CLAUSES.

v

SECTION	APPENDIX, page
69. Amount of Crown Duties to be fixed,	40
70. Clerk's Fees,	41
71. Copy of revised Draft to be furnished to the Party,	41
72. If no Objections, the revised Draft to be attested, and the Crown Writ prepared,	41
73. Crown Writs may be applied for at any Time,	41
74. Objections, if any, to draft Crown Writ to be by a Note,	41
75. Objections, how to be disposed of,	42
76. Procedure if Objections repelled,	42
77. Refusal to revise, how to be complained of,	42
78. Crown writ as revised to be engrossed and delivered,	43
79. Crown Writ to be valid,	43
80. Ceremony of Resignation abolished,	44
81. Investiture by Resignation from the Crown,	44
82. Investiture by Confirmation from the Crown,	44
83. Crown Writs and Crown Charters may be in the Forms given in Schedule (T),	45
84. Crown Writs or Precepts to Heirs specially served, how to be ob- tained, Schedule (V),	45
85. Crown Writs or Precepts of <i>Clare Constat</i> may also be granted to Heirs holding only a General Service,	46
86. Crown Writs or Precepts of <i>Clare Constat</i> to be null unless re- corded before First Term after being issued. Fees to be paid to Sheriffs and Sheriff-Clerks for a limited Period,	47
87. Register of Crown Writs to be kept,	47
88. Crown Charters or Writs of <i>Novodamus</i> , how to be obtained,	48
89. Lodging Draft Crown Writ, with Note, and recording Note, to be equivalent, in Competition, to presenting a Signature and Re- cording Abstract,	48
90. Crown Writs to be in the English Language,	48
91. Court of Session to frame Regulations,	48
92. Salary to be regulated by Commissioners of the Treasury when vacancy,	49
93. Power to Prince and Steward of Scotland to appoint his own Pre- senter of Signatures, &c.,	49
94. Compensation already awarded not to be affected,	49
95. Compensation, how to be paid,	50
96. Substitute to be appointed to Sheriff of Chancery or Presenter of Signatures in event of Absence or Disability,	50
<i>Entry with Subjects Superior.</i>	
97. Subject superior may be compelled to grant Entries by Confirma- tion,	50
98. Confirmation by Subject Superior to be by Writ or Charter in form of Schedule (V), Nos. 1 and 2,	51
99. Investiture by Resignation from Subject Superior, Schedule (V) Nos. 3 and 4,	51

vi TITLES TO LAND CONSOLIDATION (SCOTLAND) ACT 1868.

SECTION	APPENDIX, page
100. All Writs and Charters from Subject Superior may refer to Tenendas and Reddendo,	52
101. Precepts and Writs of <i>Clare Constat</i> from Subject Superior, Schedule (W) Nos. 1 and 2,	53
102. Heir in Burgage Subjects may make up Title by Writ of <i>Clare Constat</i> , Schedule (W) No. 3,	54
103. Writs of <i>Clare Constat</i> from subjects superiors, &c., not to fall by Death of the Grantor,	54
104. Where Subject Superior's Title incomplete, Owner may in certain cases apply to Lord Ordinary on the Bills to ordain Superior to complete his Title and grant an Entry, under pain of Forfeiture, Schedule (X) Nos. 1, 2, and 3, and Schedule (AA),	54
105. Owner may in such Case apply to Lord Ordinary on Bills to authorise Application for an entry by the Crown, or mediate Over-Superior as in vice of the recusant Superior, Schedule (Y) Nos. 1, 2, 3, and 4, and Schedule (Z),	55
106. Lands to be held temporarily of the Crown or mediate Superior,	57
107. The party in right of the Superiority may lodge a Minute tendering Relinquishment of his Right, and if accepted by the Petitioner the Lord Ordinary may interpose his Authority, Schedules (AA) and (BB),	57
108. Over-Superior's Rights not to be extended or affected,	58
109. Vassal obtaining or accepting Forfeiture or Relinquishment of Superiority to be liable for its Value, but Forfeiture or Relinquishment not to infer Representation,	58
110. Mode of relinquishing Superiorities, Schedule (CC) Nos. 1 and 2,	58
111. Investiture by over-Superior, Schedule (CC) No. 3,	59
112. Applications of Price of Entailed Superiorities. Price of Superiorities of Entailed Lands may be charged on the Entailed Estate,	60
113. Providing for Payment <i>in lieu</i> of Casualties of Superiority in case of Lands conveyed for Religious Purposes,	61
114. Writs of Confirmation, &c., by Subject Superiors to be tested,	62
115. Charters and Writs to operate as Confirmation of all prior Conveyances, &c.,	62
116. Stamp-Duty on Writs of Confirmation, &c.,	62

II. REDEEMABLE RIGHTS.

I. CONSTITUTION OF REDEEMABLE RIGHTS.

117. Heritable Securities to form Moveable Estate, except where conceived in favour of Heirs excluding Executors, and <i>quoad fiscum</i> . Not to belong to Husband <i>jure mariti</i> , nor to Wife <i>jure relicte</i> . Nor to be computed in <i>Legitim</i> , Schedules (DD) and (EE),	62
118. Bonds and Dispositions in Security may be granted in the form No. 1 of Schedule (FF).	64
119. Explanation of Clauses in Schedule (FF) No. 1. Clauses reserving Right of Redemption, and of Obligation to pay Expense of	

ARRANGEMENT OF CLAUSES.

vii

SECTION	APPENDIX, page
Assignment or Discharge and Power of Sale, valid, &c., Schedule (FF) Nos. 2 and 3,	64
120. Securities may be registered during Lifetime of Grantee, or Title completed after his Death,	67
121. Sale carried through in Terms of this Act to be valid to the Purchaser,	68
122. Creditors selling to count and reckon for the Surplus of the Price and to consign the same in the Bank,	68
123. On Sale and Consignation of Surplus, Lands to be disencumbered of the Security,	68
II. TRANSMISSION OF REDEEMABLE RIGHTS.	
124. Securities to be transferred in the Form prescribed. When conveyance of Heritable Security is contained in a general Deed of Conveyance, the whole such Deed need not be recorded, Schedule (GG) and (HH),	68
125. Completion of Title of Executors or Executor-nominate, or Disponee or Legatee of an Heritable Security, or of Heir where Executors excluded, Schedule (II),	69
126. Completion of Title of Executors, &c., of Creditor dying intestate, Schedule (JJ),	70
127. Executor-nominate or Disponee <i>mortis causa</i> may complete Title by Notarial Instrument, Schedule (KK),	70
128. Form of completing Title of Heir where Executors are excluded, Schedule (JJ),	71
129. Adjudgers may complete their Title by recording Abbreviate of Adjudication, [or Decree of Adjudication],	71
130. Unregistered Security or Assignment to be available to Executors, &c. of Grantee, Schedule (MM),	72
131. This Act not to affect Liability of Debtors or their Lands,	73
III. DISCHARGE AND RESTRICTION OF REDEEMABLE RIGHTS	
132. How any Heritable Security may be renounced or discharged, Schedule (NN),	73
133. Heritable Security how restricted, Schedule (OO),	73
134. Act to Apply to all Heritable Securities,	73
135. Parties may use the present Forms if they see fit,	73
136. Fees to be taken by Town-Clerks of Royal Burghs, and Keepers of Registers in Office at 1st October 1845 during their respective Rights of Office, &c.,	73
III. GENERAL ENACTMENTS.	
137. This Act to apply to Lands held by any Description of Tenure,	74
138. Short Clauses of Consent to Registration may be used in any Deed,	74
139. Females may act as instrumentary witnesses,	75
140. Additional Sheets may be added to Writs,	75
141. All deeds, &c., recorded in Register of Sasines to have Warrants of Registration endorsed, except certain Burgage Deeds,	75

viii TITLES TO LAND CONSOLIDATION (SCOTLAND) ACT 1868.

SECTION	APPENDIX, page
142. Recording of Conveyances in the Register of Sasines authorised .	76
143. Conveyances and Instruments may be recorded of new, .	76
144. Recorded Instruments not to be challenged on the ground of erasures,	77
145. Not competent to challenge existing Warrants of Registration on certain Grounds,	77
146. Obligations appointed to be inserted in Instruments of Sasine shall be inserted in Notarial Instruments,	78
147. Prohibition against Sub-infeudation not to be affected,	78
148. In all Questions under the Bankrupt Acts in Scotland, the Dates of Registration of Assignations, &c. to be held to be the Dates of the Instruments,	78
149. Deeds and Instruments may be partly written and partly printed or engraved,	78
150. Debts affecting Lands exchanged for other Lands to affect such other Lands <i>in lieu</i> thereof,	78
151. Provision for Lands held Burgage where no burgh Register of Sasine is kept,	79
152. Provision for Lands in the Burgh of Paisley held by Booking Tenure,	80
153. Fees of Town-Clerks appointed prior to 8th March 1860 reserved, but no Town-Clerks appointed after that Date to have Claims for Compensation for Loss of Fees, &c.,	80
154. Official Acts of Town-Clerks and Keepers of Registers of Sasines not to be affected by their personal Interests in recorded Writs,	81
155. Inhibitions to take Effect from Date of Registration of Notice, &c., Schedule (PP),	81
156. Short Form of Letters of Inhibition, Schedule (QQ),	81
157. No Inhibition to have Effect against Acquirenda, unless in case of Heir under Entail or other indefeasible Title,	82
158. Inhibitions on Depending Summons to be recalled on Petition to Lord Ordinary,	82
159. Litigiosity not to begin before Date of Registration of Notice of Summons, Schedule (RR),	82
160. Right to Heirship Moveables abolished,	82
161. Judgment of Lord Ordinary on the Bills subject to review of Inner-House, and Judgments in certain Cases to be final,	83
162. Court of Session may fix and regulate Fees,	83
163. Old Forms of Conveyances may be used,	84

IV. SCHEDULES.

APPENDIX, p. 84 to 132.

APPENDIX.

31° & 32° VICTORIÆ.

CAP. CI.

An Act to Consolidate the Statutes relating to the Constitution and Completion of Titles to Heritable Property in Scotland, and to make certain Changes in the Law of Scotland relating to Heritable Rights.

[31st July 1868.]

NOTE.—The figures on the margin refer to the corresponding Sections and Schedules of the Repealed Acts, re-enacted in or superseded by the present Act.

WHEREAS it is expedient to consolidate the Statutes which have been passed during recent years relating to the forms of constituting and completing titles to land and to heritable securities in *Scotland*, and to make certain changes upon the law of *Scotland* in regard to heritable rights, and to the succession to heritable securities, in *Scotland*: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Titles to Short title. Land Consolidation (*Scotland*) Act 1868."

2. This Act shall take effect from and after the thirty-first day of *December* One thousand eight hundred and sixty-eight, unless in so far as it is herein appointed to take effect at an earlier date. Commencement of Act.

3. The following words and expressions in this Act, and in the Schedules annexed to this Act, shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say, Interpretation of terms.

The words "superior," "vassal," "grantor," "grantee," "disponer," "disponee," "legatee," "adjudger," and "purchaser," shall extend to and include the heirs, successors, and representatives of such superior, vassal, grantor, grantee, disponent, disponee, legatee, adjudger, or purchaser respectively; and the word "successors" shall extend to and include heirs, disponees, assignees legal as well as voluntary, executors, and representatives:

The word "month" shall mean calendar month:

The words "Sheriff of Chancery" shall extend to and include the Sheriff of Chancery and his Substitute under this Act, or under the Act of the Tenth and Eleventh *Victoria*, chapter forty-seven; and the word "Sheriff" shall extend to and include the Sheriff and Steward of any county or stewardry and his Substitute, and the Sheriff of Chancery and his Substitute:

The words "Sheriff-clerk of Chancery" shall extend to and include the Sheriff-clerk of Chancery acting under this Act, or who acted under the Act of the Tenth and Eleventh *Victoria*, chapter forty-seven, and the Depute of such Sheriff-clerk; and the words "Sheriff-clerk" shall extend to and include the Sheriff-clerk of Chancery and the Sheriff-clerk and Steward-clerk of any county or stewardry, and their respective Deputies:

The words "Crown-writ" shall extend to and include all charters, precepts, and writs from Her Majesty, and from the Prince; and the word "Crown" shall extend to and include Her Majesty and the Prince; the words "Her Majesty" shall extend to and include Her Majesty and Her royal successors; and the word "Prince" shall extend to and include the Prince and Steward of *Scotland* and his successors:

The word "charter" and the word "writ" shall each extend to and include all Crown-writs, and all charters, precepts, and writs from subject-superiors:

The word "deed" and the word "conveyance" shall each extend to and include all charters, writs, dispositions, whether containing a warrant or precept of sasine or not, and whether *inter vivos* or *mortis causa*, and whether absolute or in trust, feu-contracts, contracts of ground-annual, heritable securities, reversions, assignations, instruments, decrees of constitution relating to land to be afterwards adjudged, decrees of adjudication for debt, and of adjudication in implement, and of constitution and adjudication combined, whether for debt or implement, decrees of declarator and adjudication, decrees of sale, and decrees of general and of special service, whether such decrees con-

tain warrant to infeft or precept of sasine or not, and the summonses, petitions, or warrants on which any such decrees proceed, warrants to judicial factors, trustees, or beneficiaries of a lapsed trust, to make up titles to lands, and the petitions on which such warrants proceed, writs of acknowledgment, contracts of excambion, deeds of entail, procuratories of resignation *ad remanentiam*, and all deeds, decrees, and writings by which lands, or rights in lands, are constituted or completed or conveyed or discharged, whether dated, granted, or obtained before or after the passing of this Act, and official extracts of all deeds and conveyances; and all codicils, deeds of nomination, and other writings annexed to or indorsed on deeds or conveyances, or bearing reference to deeds or conveyances separately granted, and decrees of declarator naming or appointing persons to exercise or enjoy the rights or powers conferred by such deeds or conveyances, shall be deemed and taken for the purposes of this Act to be parts of the deeds or conveyances to which they severally relate, and shall have the same effect in all respects as to the persons so named and appointed as if they had been named and appointed in the deeds or conveyances themselves:

The words "deed of entail" shall extend to and include all deeds and conveyances of lands under the fetters of a strict entail, and all procuratories, bonds, and contracts by which lands are settled under such fetters:

The word "instrument" shall extend to and include all notarial instruments authorised by this Act, or by any of the Acts hereby repealed, and also all instruments of sasine, instruments of resignation *ad remanentiam*, instruments of resignation and sasine, and instruments of cognition and sasine, and instruments of cognition:

The words "heritable security" and "security" shall each extend to and include all heritable bonds, bonds and dispositions in security, bonds of annualrent, bonds of annuity, and all securities authorised to be granted by the seventh section of the Act of the Nineteenth and Twentieth Victoria, chapter ninety-one, intituled *An Act to Amend and re-enact certain Provisions of an Act of the Fifty-fourth Year of King George the Third relating to Judicial Procedure and Securities for Debts in Scotland*, and all deeds and conveyances whatsoever, legal as well as voluntary, which are or may be used for the purpose of constituting or completing or transmitting a security over lands or over the rents and profits thereof, as well as such lands themselves and the rents and profits thereof, and the sums, principal, interest, and penalties secured by such securities, but shall

not include securities by way of ground-annual, whether redeemable or irredeemable, or absolute dispositions qualified by back-bonds or letters :

The word "creditor" shall extend to and include the party in whose favour an heritable security is granted, and his successors in right thereof :

The word "debtor" shall include the debtor and his successors :

The word "lands" shall extend to and include all heritable subjects, securities, and rights :

The words "notary-public" shall be held to mean a notary-public duly admitted to practise in *Scotland* :

The word "petitioner" shall extend to and include any person who may have presented or may present a petition within the meaning of this Act, or of any Act hereby repealed :

The words "judicial factor" shall extend to and include judicial factors or curators *bonis* to persons under incapacity, factors *loco tutoris*, factors *loco absentis*, and all judicial managers :

The words "infeft" and "infeftment" shall extend to and include the due registration, in the appropriate Register of Sasines, of any deed or conveyance, whether before or after the commencement of this Act, by which registration a real right to lands has been or shall be constituted.

Acts specified in Schedule (A) repealed.

4. From and after the commencement of this Act the several Acts and part of Act set forth in Schedule (A, No. 1) to this Act annexed, to the extent to which such Acts or part of Act are by such Schedule expressed to be repealed, and every other Act or Acts, and such parts of every other Act or Acts, as shall be inconsistent with this Act, shall be and the same are hereby repealed : Provided always that such repeal shall not be construed to lessen or affect any right to which any person may at the time of such repeal be entitled under the said Acts or part of Act, or to lessen or affect any liability then existing thereunder, or to invalidate or affect anything done prior to the passing hereof in pursuance of the said Acts or part of Act, or to revive or render necessary any deed, form, procedure, or practice by said Acts or part of Act repealed, abolished, or rendered unnecessary ; and provided also that any right to lands constituted or acquired under said Acts or part of Act may be completed, transferred, or extinguished either under the same or under this Act.

In conveyances of land, &c., not held burgage, certain clauses may

5. It shall not be necessary to insert in any conveyance of lands in *Scotland* not held by burgage tenure a clause of obligation to infeft, or a precept of sasine, or warrant of infeftment ; and in any conveyance of such lands in which all or any of the following clauses are necessarily or usually inserted, (*videlicet*) a

clause declaring the term of entry, a clause expressing the manner of holding, a procuratory or clause of resignation, a clause of assignation of writs and evidents, a clause of assignation of rents, a clause of obligation to free and relieve of feu-duties and casualties due to the superior, and of public burdens, a clause of war-randice, a procuratory or clause of registration for preservation, or for preservation and execution, it shall be lawful and competent to insert all or any of such clauses in the form, or as nearly as may be in the form No. 1. of Schedule (B) hereunto annexed; and all or any of such clauses, if so inserted in any such conveyance, or in any conveyance dated after the thirtieth day of *September* One thousand eight hundred and forty-seven, shall have the meaning and effect assigned to them in the sixth and eighth sections of this Act, and shall be as valid, effectual, and operative, to all intents, effects, and purposes, as if the same had been expressed in the fuller mode or form generally in use prior to the said thirtieth day of *September* One thousand eight hundred and forty-seven.

be inserted
in the short
forms given
in Schedule
(B), No. 1.

10 and 11
Vict., c. 48,
§ 1.
21 and 22
Vict., c. 76,
§ 5.

6. If the lands have been or shall be conveyed to be holden *a me* only, the clause so expressing the manner of holding shall imply that the lands are to be holden from the grantor of and under his immediate lawful superiors, in the same manner as the grantor or his predecessors or authors held, hold, or might have holden the same, and that the title of the disponent may be completed either by resignation or confirmation, or both, the one without prejudice of the other; and if the lands shall be disposed to be holden *a me vel de me*, the clause so expressing the manner of holding shall imply that the lands are either to be holden of the grantor in free blench, for payment of a penny *Scots* in name of blench farm, at *Whitsunday* yearly, upon the ground of the lands, if asked only, and freeing and relieving the grantor of all feu-duties and other duties and services exigible out of the said lands by his immediate lawful superiors thereof, or to be holden from the grantor of and under his immediate lawful superiors, in the same manner as the grantor or his predecessors or authors held, hold, or might have holden the same, and that the title of the disponent may be completed either by resignation, or confirmation, or both, the one without prejudice of the other; and where no manner of holding is expressed, the conveyance shall be held to imply that the lands are to be holden in the same manner as if the conveyance contained a clause expressing the manner of holding to be *a me vel de me*, where the titles of the lands contain no prohibition against subinfeudation, or against an alternative holding, and as if the conveyance contained a clause expressing the manner of holding to be *a me*, where the titles contain such prohibitions, or either of them: Provided always that where the said titles contain such prohibitions, or

Import of
clause ex-
pressing
manner of
holding.

10 and 11
Vict., c. 48,
§ 2.
23 and 24
Vict., c. 143,
§ 36.

either of them, the conveyance shall, if an entry in the lands therein specified or thereby conveyed be expedite with the superior within twelve months from the date of such conveyance, have the same preference in all respects from the date of recording the conveyance or any instrument thereon in the appropriate Register of Sasines as if such conveyance contained a clause expressing the manner of holding to be *a me vel de me*, and the titles did not contain any prohibition against subinfeudation or against an alternative holding: And provided always that nothing contained in this Act shall be construed to take away or impair any of the rights and remedies competent to a superior against his vassal lying out unentered.

In conveyances of burgage property certain clauses may be inserted in the forms given in Schedule (B), No. 2.

10 and 11
Vict., c. 49,
§§ 1, 2,
23 and 24
Vict., c. 143,
§ 6.

7. It shall not be necessary to insert in any conveyance of lands in *Scotland* held by burgage tenure a clause of obligation to infest, or a procuratory or clause of resignation; and every conveyance of such lands shall imply that the lands thereby conveyed are to be holden of Her Majesty in free burgage, for service of burgh used and wont; and in any conveyance of such lands, in which all or any of the following clauses are necessarily or usually inserted, (*videlicet*) a clause declaring the term of entry, a clause of obligation to free and relieve of ground-annual, cess, annuity, and other public burdens, a clause of assignation of rents, a clause of assignation of writs and evidents, a clause of warrandice, and a clause of registration for preservation and execution, it shall be lawful and competent to insert all or any of such clauses in the form or as nearly as may be in the form No. 2 of Schedule (B) hereto annexed; and all or any of such clauses, if so inserted in any such conveyance, or in any similar conveyance dated after the thirtieth day of *September* One thousand eight hundred and forty-seven, shall have the meaning and effect assigned to them in the eighth section of this Act, and shall be as valid, effectual, and operative to all intents and purposes as if they had been expressed in the fuller mode or form generally in use prior to the said thirtieth day of *September* One thousand eight hundred and forty-seven.

Import of clauses in Schedule (B), Nos. 1 and 2.

21 and 22
Vict., c. 76,
§ 5.
10 and 11
Vict., c. 48,
§ 3.
10 and 11
Vict., c. 49,
§ 2.

8. The clause for resigning the lands in form No. 1 of Schedule (B) hereto annexed shall be held and taken to be equivalent to a procuratory of resignation *in favorem* only in the terms in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven, unless specially expressed to be a resignation *ad remanentiam*, in which case it shall be equivalent to a procuratory of resignation *ad remanentiam* according to the form in use prior to the said date; and the clause of assignation of writs and evidents in forms Nos. 1 and 2 of Schedule (B) hereto annexed shall, unless specially qualified, be held to import

an absolute and unconditional assignation to such writs and evidents, and to all open procuratories, clauses, and precepts, if any, and as the case may be therein contained, and to all unrecorded conveyances to which the disponer has right; and the clause of assignation of rents in these forms shall, unless specially qualified, be held to import an assignation to the rents to become due for the possession following the term of entry, according to the legal and not the conventional terms, unless in the case of forehand rents, in which case it shall be held to import an assignation to the rents payable at the conventional terms subsequent to the date of entry; and the clause of warrandice in these forms shall, unless specially qualified, be held to imply absolute warrandice as regards the lands and writs and evidents, and warrandice from fact and deed as regards the rents; and the clause of obligation to free and relieve from feu-duties, casualties, and public burdens, in form No. 1 of Schedule (B) hereto annexed, shall, unless specially qualified, be held to import an obligation to relieve of all feu-duties or other duties and services or casualties payable or prestable to the superior, and of all public, parochial, and all local burdens due from or on account of the lands conveyed prior to the date of entry; and the clause of obligation to free and relieve from ground-annuals, cess, annuity, and other public burdens, in form No. 2 of Schedule (B) hereto annexed, shall, unless specially qualified, be held to import an obligation to relieve of all ground-annuals, cess, annuity, and other public, parochial, and local burdens, due from or on account of the lands conveyed prior to the date of entry; and the clause of consent to registration in these two forms shall, unless specially qualified, have the meaning and import and effect assigned to them in the one hundred and thirty-eighth section of this Act.

9. It shall not be necessary, in any conveyance or deed of or relating to lands held under a deed of entail, or of or relating to lands obtained by excambion in exchange for lands held under any deed of entail, or of or relating to lands purchased or acquired for the purpose of being added to any estate held under any deed of entail, or entailed on the heirs and under the conditions specified in any deed of entail, to insert the destination of heirs, or the conditions, provisions, and prohibitory, irritant and resolute clauses, or clause authorising registration in the Register of Tailzies, contained in any such deed of entail; provided the same shall in such conveyance or deed be specially referred to as set forth at full length in such deed of entail recorded in the Register of Tailzies, if the same shall have been so recorded, or as set forth at full length in any conveyance or deed recorded in the appropriate Register of Sasines, and forming part of the progress of title-deeds of the said lands held under such deed of

Conditions of entail may, in conveyances of entailed lands, be inserted by reference merely.

10 and 11 Vict., c. 47, § 5.

10 and 11 Vict., c. 48, § 4.

10 and 11 Vict., c. 49, § 3.

10 and 11 Vict., c. 51, § 26.

21 and 22
 Vict., c. 76,
 § 17.
 23 and 24
 Vict., c. 143,
 §§ 11, 27.

entail, such reference being made as nearly as may be in the terms set forth in Schedule (C) hereto annexed; and the reference to such destination, or to such conditions, provisions, and prohibitory, irritant, and resolute clauses or clause, authorising registration in the Register of Tailzies, if so made in any such conveyance or deed, whether dated prior or subsequent to the commencement of this Act, shall be equivalent to the full insertion thereof, and shall, to all intents and in all questions whatever, whether *inter hæredes* or with third parties, have the same legal effect as if the same had been inserted exactly as they are expressed in the recorded deed of entail, conveyance, or deed referred to, notwithstanding any law or practice to the contrary, or any injunction to the contrary contained in such deed of entail, or any enactments or provisions to the contrary contained in an Act of the Parliament of *Scotland* made in the year One thousand six hundred and eighty-five, intituled *An Act concerning Tailzies*, or in any other Act or Acts of the Parliament of *Scotland* or of *Great Britain*, or of the United Kingdom of *Great Britain and Ireland*, now in force.

Real burdens may be referred to as already in the Register of Sasines.

10 and 11
 Vict., c. 47,
 § 6.
 10 and 11
 Vict., c. 48,
 § 5.
 10 and 11
 Vict., c. 49,
 § 4.
 10 and 11
 Vict., c. 50,
 § 4.
 10 and 11
 Vict., c. 51,
 § 27.
 23 and 24
 Vict., c. 143,
 § 31.

10. Where lands are or shall hereafter be held under any real burdens or conditions or provisions or limitations whatsoever appointed to be fully inserted in the investitures of such lands, it shall, notwithstanding such appointment, and notwithstanding any law or practice to the contrary, not be necessary in any conveyance or deed of or relating to such lands to insert such real burdens or conditions or provisions or limitations, provided the same shall, in such conveyance or deed, be specially referred to as set forth at full length in the conveyance or deed of or relating to such lands recorded in the appropriate Register of Sasines, wherein the same were first inserted, or in any such conveyance or deed of subsequent date recorded as aforesaid, and forming part of the progress of titles of the said lands, such reference being made in the terms, or as nearly as may be in the terms set forth in Schedule (D) hereto annexed; and the reference to such real burdens, or conditions, or provisions, or limitations, if so made in any such conveyance or deed, whether dated prior or subsequent to the commencement of this Act, shall be held to be equivalent to the full insertion thereof, and shall, to all intents and in all questions whatever, whether with the disponent, or superior, or third parties, have the same legal effect as if the same had been inserted exactly as they are expressed in the recorded conveyance or deed referred to, notwithstanding any law or practice, or Act or Acts of Parliament to the contrary.

Description of lands contained

11. In all cases where any lands have been particularly described in any prior conveyance or deed of or relating thereto re-

corded in the appropriate Register of Sasines, it shall not be necessary in any subsequent conveyance or deed conveying or referring to the whole or any part of such lands to repeat the particular description of the lands at length, but it shall be sufficient to specify some leading name or names, or some distinctive description of the lands, as contained in the titles thereto, and to specify the name of the county, and, where the lands are held by burgage-tenure, or by any similar tenure, the name of the burgh and county in which they are situated, and to refer to the particular description of such lands, as contained in such prior conveyance or deed so recorded in or as nearly as may be in the form set forth in Schedule (E) hereto annexed; and the specification and reference so made in any such subsequent conveyance or deed, whether dated prior or subsequent to the commencement of this Act, shall be held to be equivalent to the full insertion of the particular description contained in such prior conveyance or deed, and shall have the same effect as if the particular description had been inserted in such subsequent conveyance or deed exactly as it is set forth in such prior conveyance or deed.

in recorded deeds may be inserted in subsequent writs by reference merely.

21 and 22 Vict., c. 76, § 15.
23 and 24 Vict., c. 143, § 34.

12. Immediately before the testing clause of any conveyance of lands, it shall be competent to insert a clause of direction, in or as nearly as may be in the form No. 1 of Schedule (F) hereto annexed, specifying the part or parts of the conveyance which the grantor thereof desires to be recorded in the Register of Sasines; and when such clause is so inserted in any conveyance, whether dated before or after the commencement of this Act, and with a warrant of registration thereon, in which express reference is made to such clause of direction (such warrant being in the form as nearly as may be of No. 2 of Schedule (F) hereto annexed), is presented to the Keeper of the appropriate Register of Sasines for registration, such Keeper shall record such part or parts only, together with the clause of direction and the testing clause and warrant of registration; and in the absence of such express reference in the warrant of registration as aforesaid, such conveyance shall be engrossed in the register as if it had contained no clause of direction; and the recording of such part or parts of the conveyance, together with the clause of direction and the testing clause, and the warrant of registration as before provided, shall have the same legal effect as if, at the date of such recording, a notarial instrument containing such part or parts of the conveyance had been duly expedite and recorded in the appropriate Register of Sasines in favour of the person on whose behalf the conveyance is presented: ~~Provided~~ that, notwithstanding such clause of direction, it shall be competent for the person entitled to present the conveyance for registration to record the whole conveyance, or to expedite and record a notarial instrument thereon, as after provided,

Clause directing part of conveyance to be recorded.

21 and 22 Vict., c. 76, § 3.
23 and 24 Vict., c. 143, §§ 5, 25.

in the same manner as if the conveyance had contained no such clause of direction ; and where such notarial instrument shall be expedé no part or parts of the conveyance directed to be recorded shall be omitted from such instrument.

Several lands conveyed by the same deed may be comprehended under one general name.

21 and 22
Vict., c. 76,
§ 16.

13. Where several lands are comprehended in one conveyance in favour of the same person or persons, it shall be competent to insert a clause in the conveyance, declaring that the whole lands conveyed and therein particularly described shall be designed and known in future by one general name to be therein specified ; and on the conveyance containing such clause, whether dated before or after the commencement of this Act, or on an instrument following thereon, whether dated before or after the commencement of this Act, and containing such particular description and clause, being duly recorded in the appropriate Register of Sasines, it shall be competent in all subsequent conveyances and deeds and discharges, of or relating to such several lands, to use the general name specified in such clause as the name of the several lands declared by such clause to be comprehended under it ; and such subsequent conveyances and deeds and discharges of or relating to such several lands under the general name so specified shall be as effectual in all respects as if the same contained a particular description of each of such several lands, exactly as the same is set forth in such recorded conveyance or instrument : Provided always that reference be made in such subsequent conveyances and deeds and discharges to a prior conveyance or instrument recorded as aforesaid, in which such particular description and clause are contained : Provided also that it shall not be necessary in such clause to comprehend under one general name the whole lands contained in the conveyance in which such clause is inserted, but that it shall be competent to comprehend certain lands under one general name, and certain other lands under another general name, it being clearly specified what lands are comprehended under each general name : and such reference shall be in or as nearly as may be in the terms set forth in Schedule (G) hereunto annexed.

Certain clauses in entails no longer necessary.

11 and 12
Vict., c. 36,
§ 39.
21 and 22
Vict., c. 76,
§ 18.
23 and 24
Vict., c. 143,
§ 12.

14. Where a deed of entail contains an express clause authorizing registration of the deed in the Register of Tailzies, it shall not be necessary to insert clauses of prohibition against alienation, contracting debt, and altering the order of succession, and irritant and resolute clauses, or any of them ; and such clause of registration contained in any deed of entail of lands not held by burgage tenure, dated on or after the first day of *October* One thousand eight hundred and fifty-eight, or of lands held by burgage tenure, dated on or after the tenth day of *October* One thousand eight hundred and sixty, shall have in every respect the same

operation and effect as if such clauses of prohibition, and such irritant and resolute clauses, had been inserted in such deed of entail, any law or practice to the contrary notwithstanding.

15. It shall not be necessary towards obtaining infeftment in land to expedite and record in the case of lands not held by burgage tenure an instrument of Sasine, or, in the case of lands held by burgage tenure, an instrument of resignation and sasine, on any conveyance or deed of or relating to such lands, but it shall be competent and sufficient for the person or persons in whose favour the conveyance or deed has been or shall be granted or conceived, instead of expediting and recording such instrument of sasine or of resignation and sasine, to record the conveyance or deed itself in the appropriate Register of Sasines; and the conveyance or deed being presented for registration in such register, with a warrant of registration thereon, in or as nearly as may be in the form No. 1 of Schedule (H) hereto annexed, and being so recorded along with such warrant, shall have the same legal force and effect in all respects as if the conveyance or deed so recorded had been followed by an instrument of sasine in the case of lands not held by burgage tenure, or, in the case of lands held by burgage tenure, by an instrument of resignation and sasine expedite in favour of the person on whose behalf the conveyance or deed is presented for registration, and recorded in the appropriate Register of Sasines, at the date of recording the said conveyance or deed; and where it is desired to give investiture *propriis manibus*, it shall be competent for the person in whose favour the conveyance or deed has been or shall be granted or conceived to record the conveyance or deed itself in the Register of Sasines applicable to the lands therein contained, with a warrant of registration thereon in or as nearly as may be in the form of No. 3 of Schedule (H) hereto annexed, signed by such person, and such conveyance or deed being so recorded along with such warrant shall have the same legal force and effect in all respects as if the conveyance or deed so recorded had been followed by an instrument of sasine, or of resignation and sasine *propriis manibus* expedite in favour of the wife of such person, and signed by such person, and recorded at the date of recording the said conveyance or deed according to the law and practice heretofore in force.

16. It shall not be necessary towards obtaining infeftment in lands holden by burgage tenure upon any conveyance or deed of or relating to such lands that the person or a procurator for the person obtaining infeftment shall appear before the provost or some one of the bailies of the burgh in which such lands are situated, and resign the same into his hands as into the hands of Her Majesty, and for such provost or bailie to give sasine to such per-

Instrument of sasine no longer necessary, but conveyance may be recorded instead.

21 and 22 Vict., c. 76, § 1.

23 and 24 Vict., c. 143, § 3.

8 and 9 Vict., c. 31, § 1.

10 and 11 Vict., c. 50, §§ 6, 10.

Mode of expediting sasine in lands holden by burgage.

10 and 11 Vict., c. 49, §§ 5, 6.

son or procurator, nor shall it be necessary to proceed to the ground of the lands, or to the council chamber of the burgh, or to use any symbol of resignation or sasine; and, notwithstanding the provisions of the immediately preceding section of this Act, it shall be lawful and competent to resign and obtain infestment in such lands by presenting to any notary public such conveyance or deed and other necessary warrants, and by such notary public giving sasine therein by subscribing and recording an instrument in the form and manner hereinafter mentioned; and the instrument of sasine, or of resignation and sasine following on such conveyance or deed may be expressed in the form or as nearly as may be in the form of Schedule (I) hereto annexed, and shall be authenticated in the manner shown in such Schedule; and such sasine, or resignation and sasine, and such instrument following thereon, shall be as valid and effectual as if the same had been made and received and given and expressed in the mode and form in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven, and that notwithstanding of an Act of the *Scottish* Parliament passed in the year One thousand five hundred and sixty-seven, or any other Act of Parliament now in force to the contrary; and every such instrument of sasine, or of resignation and sasine, and every similar instrument of sasine, or of resignation and sasine exped in virtue of the provisions of the Act Tenth and Eleventh of the reign of her present Majesty, chapter forty-nine, shall be recorded in manner in use prior to the said thirtieth day of *September* One thousand eight hundred and forty-seven, with regard to instruments of resignation and sasine in burgage property, and the town clerks of cities and burghs are hereby required to register the same accordingly; and such instruments of sasine, or of resignation and sasine, being so recorded, shall in all respects have the same effect at the date of such recording as if resignation had been made and accepted and sasine had been given, and an instrument of sasine, or of resignation and sasine, had been exped in favour of the person so obtaining infestment, and had been recorded in the appropriate Register of Sasines, according to the law and practice in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven.

Not necessary to record the whole conveyance or discharge.

8 and 9
Vict., c. 31,
§ 1.

17. Where it is not desired to record in the Register of Sasines the whole of a conveyance or deed, or the whole of a discharge, of or relating to lands, it shall be competent and sufficient to exped and record in the appropriate Register of Sasines a notarial instrument setting forth generally the nature of the conveyance or deed or discharge, and containing those portions of the same by which the lands are conveyed or discharged, and by which real burdens, conditions, provisions, or limitations are imposed or dis-

charged; and where by any conveyance, or deed, or discharge, ^{21 and 22} separate lands or separate interests in the same lands are conveyed ^{Vict., c. 76,} or discharged in favour of the same or different persons, it shall ^{§ 2.} not be necessary to record the whole of such conveyance, or deed, ^{23 and 24} or discharge, but it shall be competent and sufficient to expedite ^{Vict., c. 143,} and record as aforesaid a notarial instrument, setting forth generally the nature of the conveyance or deed or discharge and containing the part or parts of the conveyance or deed or discharge, by which particular lands are conveyed or discharged in favour of the person or persons in whose favour the notarial instrument is expedite, and the part of the conveyance or deed or discharge, which specifies the nature and extent of the right and interest of such person or persons, with the real burdens, conditions, provisions, and limitations, if any; and such notarial instrument shall be in or as nearly as may be in the form of Schedule (J) hereto annexed; and upon such notarial instrument or any similar notarial instrument expedite in virtue of any of the Acts of Parliament hereby repealed being so recorded, the person or persons in whose favour the same has been or shall be expedite and so recorded, shall be in the same position as if, at the date of such recording, the conveyance or deed or discharge on which it proceeds, along with a warrant of registration thereon, had been recorded in the appropriate Register of Sasines in favour of such person or persons.

18. It shall not be necessary to expedite and record an instrument of resignation *ad remanentiam* on any procuratory of resignation *ad remanentiam*, or on any conveyance containing an express clause of resignation *ad remanentiam*, but it shall be competent and sufficient for the superior in whose favour the resignation under such procuratory or conveyance is authorised to be made, to record in the appropriate Register of Sasines such procuratory or conveyance, with a warrant of registration thereon in the form or as nearly as may be in the form No. 1 of Schedule (H) hereto annexed, or to expedite and record a notarial instrument as nearly as may be in the form of Schedule (J) hereto annexed; and such procuratory or conveyance and warrant, or such notarial instrument, being so recorded, shall have the same effect as if, at the date of such recording, an instrument of resignation *ad remanentiam* in favour of the party on whose behalf the same is so recorded had been expedite on such procuratory or conveyance, and had been recorded in the appropriate Register of Sasines: Provided always that nothing herein contained shall prevent an instrument of resignation *ad remanentiam* being expedite and recorded on a conveyance granted prior to the first day of *October* One thousand eight hundred and fifty-eight, and containing a clause of resignation in the form authorised by the Act of the Tenth and Eleventh *Victoria*, ^{Instrument of resignation *ad remanentiam* unnecessary, but in place thereof conveyance in favour of superior may be recorded.} ^{21 and 22} ^{Vict., c. 76,} ^{§ 4.}

chapter forty-eight; and that all instruments of resignation *ad remanentiam* may be in or as nearly as may be in the form of Schedule (K) hereto annexed; and when in such form, whether expedite before or after the commencement of this Act, the same may, with warrant of registration thereon, be recorded in the appropriate Register of Sasines at any time during the life of the party in whose favour the resignation is made, and the date of presentment and entry set forth on any instrument of resignation in such form by the Keeper of the Register shall be the date of the resignation and of the instrument.

Notarial
instruments
in favour of
general
dispones.

21 and 22
Vict., c. 76,
§ 12.
23 and 24
Vict., c. 143,
§ 8.
8 and 9
Vict., c. 31,
§ 4.

19. Where a person shall have granted or shall grant a general disposition of his lands, whether by conveyance *mortis causa* or *inter vivos*, or by a testamentary deed or writing within the sense and meaning of the twentieth and twenty-first sections of this Act, and whether such general disposition shall extend to the whole lands belonging to the granter, or be limited to particular lands belonging to him, with or without full description of such lands, and whether such general disposition shall contain or shall not contain a procuratory or clause of resignation, or a precept of sasine, or an obligation to infeft, or a clause expressing the manner of holding, it shall be competent to the grantee under such general disposition to expedite and record in the appropriate Register of Sasines a notarial instrument in or as nearly as may be in the form of Schedule (L) hereto annexed; and on such notarial instrument or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed being so recorded, such grantee shall be in all respects in the same position as if a conveyance of the lands contained in such notarial instrument had been executed in his favour by the granter of the general disposition, to be holden, in the case of lands not held by burgage tenure, by such manner of holding, if any, as is expressed in the general disposition, and if no particular manner of holding is therein expressed, then to be holden in the manner and to the effect, and subject to the provisions enacted and provided in the sixth section of this Act in the case of conveyances in which no manner of holding is expressed, and in the case of lands held by burgage tenure to be holden of Her Majesty in free burgage, and as if such conveyance had been followed, where such lands are not held by burgage tenure, by an instrument of sasine of the said lands in favour of such grantee, or, where they are held by burgage tenure, by an instrument of resignation and sasine thereof in his favour expedite and recorded in the appropriate Register of Sasines, at the date of recording such notarial instrument: Provided always that where such notarial instrument shall be expedite by a person other than the original grantee under such general disposition, it shall set forth the title or series of

titles by which the person in whose favour it is expedite acquired right to such general disposition, and the nature of his right.

20. From and after the commencement of this Act it shall be competent to any owner of lands to settle the succession to the same in the event of his death, not only by conveyances *de præ-senti* according to the existing law and practice, but likewise by testamentary or *mortis causa* deeds or writings, and no testamentary or *mortis causa* deed or writing purporting to convey or bequeath lands which shall have been granted by any person alive at the commencement of this Act, or which shall be granted by any person after the commencement of this Act, shall be held to be invalid as a settlement of the lands to which such deed or writing applies, on the ground that the grantor has not used, with reference to such lands, the word "dispone," or other word or words importing a conveyance *de præ-senti*; and where such deed or writing shall not be expressed in the terms required by the existing law or practice for the conveyance of lands, but shall contain with reference to such lands any word or words which would, if used in a will or testament with reference to moveables, be sufficient to confer upon the executor of the grantor, or upon the grantee or legatee of such moveables, a right to claim and receive the same, such deed or writing, if duly executed in the manner required or permitted in the case of any testamentary writing by the law of *Scotland*, shall be deemed and taken to be equivalent to a general disposition of such lands within the meaning of the nineteenth section hereof by the grantor of such deed or writing in favour of the grantee thereof, or of the legatee of such lands, and shall be held to create and shall create in favour of such grantee or legatee an obligation upon the successors of the grantor of such deed or writing to make up titles in their own persons to such lands and to convey the same to such grantee or legatee; and it shall be competent to such grantee or legatee to complete his title to such lands in the same manner and to the same effect as if such deed or writing had been such a general disposition of such lands in favour of such grantee or legatee, and that either by notarial instrument or in any other manner competent to a general disponent: Provided always that nothing herein contained shall be held to confer any right to such lands on the successors of any such grantee or legatee who shall predecease the grantor, unless the deed or writing shall be so expressed as to give them such right in the event of the predecease of such grantee or legatee.

21. Where such testamentary or *mortis causa* deed or writing shall be conceived in favour of a grantee as trustee or executor of the grantor, and shall not be expressed to be wholly in favour of the grantee, the trustee or executor shall be held to apply the lands for purposes

of trust or will.

[*New.*]

of such trustee or executor for his own benefit, such trustee or executor shall apply such whole lands for the purposes specified in such deed or writing; and where such purposes cannot, in whole or in part, be carried into effect, or where no purposes with reference to such lands have been or shall be specified in such deed or writing, such trustee or executor shall convey such lands, or so much thereof, or shall apply so much of the proceeds thereof, if such lands shall have been sold and realised by him, as may not be required for the purposes of such deed or writing, to or for behoof of the person or the successors of the person who, but for the passing of this Act and the granting of such deed or writing, would have been entitled to succeed to such lands on the death of such grantor.

Assignations to unrecorded conveyances.

21 and 22
Vict., c. 76,
§ 13.
23 and 24
Vict., c. 143,
§ 9.
10 and 11
Vict., c. 50,
§ 6.

22. It shall be competent to any person having right to an unrecorded deed or conveyance, whether granted in favour of himself or originally granted in favour of another person, to assign the deed or conveyance, in or as nearly as may be in the form No. 1 of Schedule (M) to this Act annexed, setting forth the deed or conveyance, and the title or series of titles, if any, by which he acquired right to the same, and the nature of the right assigned; and the assignation, or in the event of there being more than one, the successive assignations, may be recorded in the appropriate Register of Sasines along with the deed or conveyance itself, and a warrant of registration thereon, in or as nearly as may be in the form No. 2 of Schedule (H) hereto annexed; and it shall be competent to write the assignation or assignations on the deed or conveyance itself, in or as nearly as may be in the form No. 2 of Schedule (M) hereto annexed, setting forth the deed or conveyance and the title or series of titles, if any, by which such person acquired right to the same, and the nature of the right assigned; in which case the assignation or assignations and the deed or conveyance may be so recorded along with the warrant of registration thereon, which warrant shall be in or as nearly as may be in the form No. 1 of Schedule (H) hereto annexed; and the deed or conveyance, with the warrant of registration, and the assignation or assignations, separate from the deed or conveyance, and those written upon the deed or conveyance, if any, and all similar assignations granted before the commencement of this Act, being so recorded, shall operate in favour of the assignee on whose behalf they are presented for registration, as fully and effectually as if the lands contained in the assignation, or, if there be more than one, in the last assignation, had been disposed by the original deed or conveyance in favour of such assignee, and the deed or conveyance, with the warrant of registration, had been recorded, in the manner hereinbefore provided, of the date of recording such deed or conveyance

and assignation or assignments; and all deeds or conveyances with a warrant of registration and assignation or assignments written thereon, that may have been so recorded before the commencement of this Act, shall operate in favour of the assignees on whose behalf the same shall have been so recorded, as effectually as is hereinbefore provided in regard to a recorded deed or conveyance with a warrant of registration and assignation or assignments written thereon, notwithstanding that such assignation or assignments may not have been docquetted with reference to such warrant, or referred to therein as being so docquetted.

23. It shall be competent to any person having right to an unrecorded deed or conveyance originally granted in favour of another person to expedite a notarial instrument in or as nearly as may be in the form of Schedule (N) hereto annexed, setting forth the deed or conveyance and the title or series of titles by which he acquired right to the same, and the nature of his right, and to record the deed or conveyance, with warrant of registration thereon, in the form or as nearly as may be in the form of No. 2 of Schedule (H) hereto annexed, and also the notarial instrument, in the appropriate Register of Sasines; or, where it is not desired to record the whole of the deed or conveyance, it shall be competent to expedite a notarial instrument in or as nearly as may be in the form of Schedule (J) hereto annexed, setting forth generally the nature of the deed or conveyance, and containing those portions of the deed or conveyance by which the lands in regard to which the said instrument is expedite are conveyed, and by which real burdens, conditions, provisions, or limitations, if any, are imposed, and also setting forth the title or series of titles by which the party acquired right to the deed or conveyance, and to record such notarial instrument in the appropriate Register of Sasines; and on the deed or conveyance, with such warrant of registration thereon, and such notarial instrument in the form of the said Schedule (N), or any similar deed or conveyance with warrant of registration and notarial instrument expedite in virtue of any Act of Parliament hereby repealed, being so recorded, or on such notarial instrument in the form of the said Schedule (J), or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed, being so recorded, the person in whose favour the deed or conveyance and instrument, or the instrument, have or has been or shall be expedite and so recorded, shall be in the same position as if the original deed or conveyance had been granted to himself, and, along with a warrant of registration thereon, had been recorded in the manner hereinbefore provided, of the date of recording the deed or conveyance and notarial instrument or the notarial instrument.

Notarial instruments in favour of parties acquiring rights to unrecorded conveyances.

21 and 22
Vict., c. 76,
§ 14.
23 and 24
Vict., c. 143,
§ 10.
10 and 11
Vict., c. 50,
§ 6.
8 and 9
Vict., c. 31,
§ 4.

Mode of
completing
title by a
judicial fac-
tor on a
trust-estate,
&c.

21 and 22
Vict., c. 76,
§ 21.

23 and 24
Vict., c. 143,
§ 38.

24. Where, in a petition to the Court of Session for the appointment of a judicial factor, authority has been or shall be asked for the completion of a title by such factor to any lands forming the whole or part of the estate to be managed by such judicial factor, or where a judicial factor has applied or shall apply, by petition or note to said Court, for authority to complete a title to such lands, and where any petition or note has specified and described or shall specify and describe the lands to which such title is to be completed, or has referred or shall refer to the description of the same, in the form or as nearly as may be in the form of Schedule (E) hereto annexed, or of Schedule (G) hereto annexed, as the case may be, the warrant granted for completing such title shall also so specify and describe the lands to which such title is to be completed, or shall so refer to the description thereof; and such warrant shall be held to be a conveyance in due and common form of the lands therein specified in favour of such judicial factor granted by the person, whether in life or deceased, whose estate is under judicial management, or granted, where such judicial factor has been or shall be appointed on a trust estate which shall have been vested in a trustee or former judicial factor, by such trustee or former factor, whether in life or deceased, for the purposes of such trust, to be holden in the case of lands not held by burgage tenure in the manner and to the effect, and subject to the provisions enacted and provided in the sixth section of this Act in the case of conveyances in which no manner of holding is expressed, and in the case of lands held by burgage tenure to be holden of Her Majesty in free burgage; and such warrant may, with warrant of registration thereon, be recorded in the appropriate Register of Sasines as a conveyance in favour of such judicial factor, and being so recorded shall have the same force and effect as if at the date of such recording such conveyance had been granted to the judicial factor, and recorded in the appropriate Register of Sasines: Provided always, that for enabling the person in whom such lands were last vested, or his representatives, or other parties interested, to bring forward competent objections against such warrant being granted, or claims upon the estate, the Court shall order such intimation and service of the petition or note as to them shall seem proper: Declaring always, that the whole enactments and provisions herein contained shall extend and apply to all petitions to and warrants by the Court of Session under "The Trusts (*Scotland*) Act 1867," unless in so far as such provisions and enactments may be inapplicable to the form or objects of such petitions or warrants.

Mode of
completing
title by a
trustee in

25. It shall be competent to a trustee on a sequestrated estate, or to liquidators, official or voluntary, appointed for the purpose of winding-up a joint-stock company, to expedite a notarial instru-

ment, setting forth the act and warrant of confirmation in favour of such trustee, or the appointment of such liquidators, official or voluntary, respectively, and specifying the lands belonging to the bankrupt or company to which a title is to be completed, and the title by which such lands are held by the bankrupt or company, in or as nearly as may be in the form of Schedule (O) hereto annexed, and when the lands consist of heritable securities by a notarial instrument in or nearly as may be the form of Schedule (LL) hereto annexed, and to record such notarial instrument in the appropriate Register of Sasines; and on such notarial instrument or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed being so recorded, the trustee or liquidators in whose favour the same shall have been or shall be so recorded shall be held to be in all respects in the same position as if the bankrupt or company, or any previous trustee or liquidator had granted a conveyance of the lands contained in the notarial instrument in favour of such trustee or such liquidators, to be holden in the case of lands not held by burgage tenure in the manner and to the effect, and subject to the provisions enacted and provided in section sixth hereof in the case of conveyances where no manner of holding is expressed, and in the case of lands held by burgage tenure to be holden of Her Majesty in free burgage, and as if such conveyance had been recorded or followed by an instrument of sasine, or of resignation and sasine, or notarial instrument, in favour of such trustee or of such liquidators, duly expedite and recorded in the appropriate Register of Sasines at the date of recording such notarial instrument.

26. Wherever lands have been or may hereafter be acquired by any congregation, society, or body of men associated for religious purposes, or for the promotion of education, including the general assemblies, synods, and presbyteries of the Established Church of *Scotland*, and of all other Presbyterian Churches in *Scotland*, as a chapel, meeting-house, or other place of worship, or as a manse or dwelling-house for the minister of such congregation or society or body of men, or offices, garden, or glebe for his use, or as a schoolhouse or schoolmaster's house, garden, or playground, or as a college, academy, or seminary, or as a hall or rooms for meeting for the transaction of business, or as part of the property belonging to such congregation, society, or body of men, and wherever the conveyance or lease of such lands has been or may be taken in favour of the moderator, minister, kirk-session, vestrymen, deacons, managers, or other office-bearers or office-bearer of such congregation or society or body of men, or any of them, or of trustees appointed or to be from time to time appointed, or of any party or parties named in such conveyance, or lease in trust for behoof of the congregation or society or body of

sequestration, and by liquidators of joint-stock companies.

21 and 22
Vict., c. 76,
§ 22.
23 and 24
Vict., c. 143,
§ 15.

Heritable property conveyed for religious or educational purposes to vest in donees or their successors.

13 Vict.,
c. 18, § 1.
23 and 24
Vict., c. 143,
§ 32.

men, or of the individuals comprising the same, such conveyance, when recorded with warrant of registration thereon in terms of this Act, or when followed by notarial instrument expedite, and with warrant of registration thereon recorded in terms of this Act, or such lease, shall not only vest the party or parties named therein in the lands, thereby feued, conveyed, or leased, but shall also, after the death or resignation or removal from office of such party or parties, or any of them, effectually vest their successors in office for the time-being chosen and appointed in the manner provided or referred to in such conveyance or lease, or if no mode of appointment be therein set forth or prescribed, then in terms of the rules or regulations of such congregation or society or body of men, in such lands, subject to such and the like trusts and with and under the same powers and provisions as are contained or referred to in the conveyance or lease given and granted to the parties dispoonees or lessees therein, and that without any transmission or renewal of the investiture whatsoever, anything in such conveyance or lease contained to the contrary notwithstanding: And the provisions of this section shall apply also to all trusts for the maintenance, support, or endowment of ministers of religion, missionaries, or schoolmasters, or for the maintenance of the fabric of churches, chapels, meeting-houses, or other places of worship, or of manses or dwelling-houses or offices for ministers of the Gospel, or of schoolhouses or schoolmasters' houses, or other like buildings.

Services to proceed by petition to the Sheriff.

10 and 11
Vict., c. 47,
§§ 1, 2,
23 and 24
Vict., c. 143,
§ 7.

27. From and after the commencement of this Act it shall not be competent to issue briefs from Chancery for the service of heirs, or for any person to obtain himself served heir by virtue of any such brief, or otherwise than according to the provisions of this Act; and every person desirous of being served heir to a person deceased, whether in general or in special, and in whatsoever character, and whether the lands which belonged to such person deceased were held by burgage tenure or were not held by burgage tenure, shall present a petition of service to the Sheriff in manner hereinafter set forth.

Petition to be presented to the Sheriff of the county, or to the Sheriff of Chancery.

10 and 11
Vict., c. 47,
§ 3.

28. In every case in which a general service only is intended to be carried through, such petition shall be presented to the Sheriff of the county within which the deceased had at the time of his death his ordinary or principal domicile, or, in the option of the petitioner, to the Sheriff of Chancery, and if the deceased had at the time of his death no domicile within *Scotland*, then in every such case to the Sheriff of Chancery; and in every case in which a special service is intended to be carried through, such petition shall be presented to the Sheriff within whose jurisdiction the lands or the burgh containing the lands in which the deceased

person died last vest and seised are situated, or, in the option of the petitioner, to the Sheriff of Chancery, and in the event of the lands being situated in more counties than one, or in more burghs than one if such burghs are in different counties, then in every such case to the Sheriff of Chancery.

29. Every petition for service shall be subscribed by the petitioner, or by a mandatory specially authorised for the purpose, and shall be in the form or as nearly as may be in the form of one or other of the Schedules (P) and (Q) hereunto annexed, and shall, under the exceptions after-mentioned, set forth the particulars which, according to the law and practice existing prior to the fifteenth day of *November* One thousand eight hundred and forty-seven had been in use to be set forth with reference to a service sought to be carried through in any claim presented to a jury summoned under a brieve of inquest, and shall pray the Sheriff to serve the petitioner accordingly; Provided always, that it shall not be necessary in such petition to set forth in any case the value of the lands either according to new or old extent, or the valued rent thereof, or of whom the lands are held, or by what service or tenure they are held, or in whose hands the same have been since the death of the ancestor, or whether or how long the same have been in non-entry, or that the petitioner is of lawful age, or that the ancestor died at the faith and peace of the Sovereign, but that in setting forth the death of the ancestor, there shall also be set forth the date at or about which the said death took place, and in cases of general service, except as hereinafter provided, the county or place in which the deceased at the time of his death had his ordinary or principal domicile, and that in every case in which the petitioner claims to be served heir of provision, or of taillie and provision, whether in general or special, the deed or deeds under which he so claims shall be distinctly specified.

Nature and form of petition.

10 and 11 Vict., c. 47, § 4.

30. When any petition of service shall be presented to the Sheriff of any county, the service shall not proceed until publication shall be made in such county, nor until the Sheriff-clerk of the county shall have received from the Sheriff-clerk of Chancery official notice that publication has been made edictally in *Edinburgh*; and when such petition shall be presented to the Sheriff of Chancery, the service shall not proceed until publication shall have been made edictally in *Edinburgh*, nor until the Sheriff-clerk of Chancery shall have received official notice that publication has been made in the county of the domicile of the party deceased, when such domicile was within *Scotland*, or the county or counties in which the lands are situated, as the case may be; and the edictal publication in *Edinburgh* shall be at the office of the Keeper of Edictal Citations in the General Register Office,

Services not to proceed till publication be made.

10 and 11 Vict., c. 47, § 7.

and in the same mode and form as in edictal citations; and in the county of the domicile, and in the county or counties where the lands are situated, by affixing on the doors of the Court-house, or in some conspicuous place of the Court, or of the office of the Sheriff-clerk of the county, as the Sheriff may direct, a short abstract of the petition, and there shall be no farther publication; and the form of such abstract, and the mode or form of the official notice of such publications, shall be those fixed and declared by the Court of Session, by Act of Sederunt, in virtue of the powers hereinafter mentioned.

Caveats to
be received.

10 and 11
Vict., c. 47,
§ 8.

31. The Sheriff-clerk shall be bound to receive any caveat against any petition of service to be presented to him, and on the receipt of the petition of service referred to in the caveat, or of any official notice of any such petition which may be communicated to such Sheriff-clerk, such Sheriff-clerk shall within twenty-four hours thereafter write and put into the post office a notice of such petition, addressed either to the agent by whom or to the person on whose behalf the caveat is entered, as may be desired in such caveat, and according to the name and address which shall be stated in such caveat, the Sheriff-clerk receiving therefor a fee for his own use of such amount as shall be fixed by Act of Sederunt as aforesaid.

Petition of
service to
be equivalent to a
brieve and
claim.

10 and 11
Vict., c. 47
§ 9.

32. A petition of service so presented shall, after expiration of the period hereinafter mentioned, be equivalent to and have the full legal effect of a brieve of service duly executed, and of a claim duly presented to the inquest, according to the law and practice existing prior to the fifteenth day of *November One thousand eight hundred and forty-seven*; and every petition of service, without further publication than is herein provided and has been or may be directed by Act of Sederunt, shall be held as duly published to all parties interested, and the decree to follow upon such petition shall not be questionable or reducible upon the ground of omission or inaccuracy in the observance by any officer or official person of any of the forms or proceedings herein prescribed, or which have been or shall be prescribed by Act of Sederunt made in relation to petitions of service.

Procedure
before the
Sheriff, and
the effect of
his judgment.

10 and 11
Vict., c. 47,
§ 10.

33. In regard to all petitions of service presented to the Sheriff of Chancery, or to the Sheriff of a county respectively, where the deceased died in *Scotland*, no evidence shall be led and no decree pronounced thereon by such Sheriff until after the lapse of fifteen days from the date of the latest publication, or where publication is to be made in *Orkney* or *Shetland*, or the petition is presented to the Sheriff of *Orkney* or *Shetland*, until after the lapse of twenty days from such date; and in regard to all petitions

of service to be presented to the Sheriff of Chancery where the deceased died abroad, no evidence shall be taken and no decree pronounced thereon by him until after the lapse of thirty days from such date; and it shall be lawful, after the lapse of the times respectively above-mentioned, to the Sheriff to whom such petition of service shall have been presented, by himself, or by the provost or any of the bailies of any city or royal or parliamentary burgh, or by any justice of the peace for any part of the United Kingdom, wherever such justice of the peace may happen to be for the time, whether within the United Kingdom or abroad, or by any notary-public, all of whom are hereby authorised to act as commissioners of such Sheriff without special appointment, or by any commissioner whom such Sheriff may appoint, to receive all competent evidence, documentary and parole, and any parole evidence so received shall be taken down in writing according to the practice in the Sheriff-courts of *Scotland* existing prior to the first day of *November* One thousand eight hundred and fifty-three, and a full and complete inventory of the documents produced shall be made out, and shall be certified by the Sheriff or his Commissioner aforesaid; and on considering the said evidence the Sheriff shall, without the aid of a jury, pronounce decree, serving the petitioner in terms of the petition, in whole or in part, or refusing to serve the said petitioner, and dismissing the petition, in whole or in part, as shall be just; and the said decree shall be equivalent to and have the full legal effect of the verdict of the jury under the brieve of inquest, according to the law and practice existing prior to the said fifteenth day of *November* One thousand eight hundred and forty-seven.

34. Where a general service only is intended to be carried through by an heir, it shall not be necessary, if the deceased died upwards of ten years prior to the date of presenting the petition for general service as heir to him, to state or prove the county within which the deceased had his ordinary or principal domicile at the time of his death; or that such domicile was furth of *Scotland*; but in such cases it shall be sufficient (so far as regards the domicile of the deceased) for the heir to state in his petition, and if required in the court of service to make oath, that he is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death: Provided always, that in every such case, and in every case of general service where it is doubtful in what county the deceased had his ordinary or principal domicile, the petition for general service as heir to the deceased shall be dealt with, and all relative procedure shall be regulated in or as nearly as may be in the same manner as if it had been proved that the deceased had at the time of his death his ordinary or principal domicile furth of *Scotland*.

Case where domicile of party is unknown.

21 and 22
Vict., c. 76,
§ 30.

Competing
petition may
be present-
ed, and
Sheriff,
after receiv-
ing evi-
dence, give
judgment.

10 and 11
Vict., c. 47,
§ 11.

35. It shall be lawful to any person who may conceive that he has a right to be served preferable to that of the person petitioning the Sheriff as aforesaid, also to present a petition of service to the Sheriff in manner and to the effect aforesaid, and the same shall be proceeded with in manner hereinbefore directed; and it shall be lawful to the Sheriff, if he shall see cause, at any time before pronouncing decree in the first petition, to sist procedure on the first petition in the meantime, or to conjoin the said petitions, and thereafter to proceed to receive evidence in manner hereinbefore directed, allowing each of the parties not only a proof in chief with reference to his own claim, but a conjunct probation with reference to the claims of such other parties; and the Sheriff shall, after receiving the evidence, pronounce decree on the said petitions, serving or refusing to serve as may be just, and shall at the same time dispose of the matter of expenses; and when the accounts thereof shall be audited and taxed in manner after provided, such Sheriff shall decern for the same.

Recording
and extract
of judgment.

10 and 11
Vict., c. 47,
§ 12.

36. On the application of the petitioner in whose favour a decree shall have been pronounced by the Sheriff, the Sheriff-clerk shall forthwith transmit to the office of the Director of Chancery the petition on which such decree was pronounced, together with such decree, the proof taken down in writing as aforesaid, and the inventories of written documents made up and certified as aforesaid, and also all other parts or steps of the process, excepting any original documents or extracts of recorded writs produced therewith, which, after decree is pronounced, shall be returned, on demand, to the parties producing the same; and on the proceedings being so transmitted to Chancery, such decree shall be recorded by the Director of Chancery, or his depute, in the manner and form directed or approved of, or to be directed or approved of from time to time by the Lord Clerk Register; and on such decree being so recorded, the Director of Chancery, or his Depute, shall prepare an authenticated extract thereof, and where such decree shall have been pronounced by the Sheriff of Chancery, shall deliver such extract to the party or his agent, and in all other cases shall transmit such extract without delay, and without charge or expense against the party in respect of the transmission and re-transmission to the Sheriff-clerk of the county to be by him delivered to the party or his agent in the Sheriff-court; and such proceedings and decree shall, both prior and subsequent to the said transmission, be at all times patent and open to inspection in the office of the Sheriff-clerk and of the Director of Chancery respectively; and certified copies shall be given to any party demanding the same on payment of such fees as shall be fixed by Act of Sederunt as aforesaid; and in cases where an heir is served to an ancestor in several separate lands or estates under

the same petition, it shall be competent for such heir to obtain separate extract decrees under the said petition applicable to one or more of such parcels of lands or separate estates, provided a prayer to that effect is inserted in the petition for service.

37. The decree of service so recorded and extracted shall have the full legal effect of a service duly retoured to Chancery, and shall be equivalent to the retour of a service under the brieve of inquest according to the law and practice existing prior to the fifteenth day of *November* One thousand eight hundred and forty-seven; and the extract of such decree, or any second or later extract thereof, under the hand of the proper officer entitled to make such extracts for the time, shall be equivalent to and have the full legal effect of the certified extract of the retour formerly in use according to the law and practice existing prior to the said fifteenth day of *November* One thousand eight hundred and forty-seven; and the decree of service so recorded and extracted shall not be liable to challenge, nor be set aside, except by a process of reduction to be brought before the Court of Session as heretofore in use with regard to services duly retoured to Chancery.

The extract decree to be equivalent to an extract retour.

10 and 11
Vict., c. 47,
§ 13.

38. The book or books in Chancery in which such decree shall be recorded as aforesaid shall be entitled the "Record of Services," and shall be the book or books presently in use as the "Record of Services" under the said recited Act Tenth and Eleventh of the reign of Her present Majesty, chapter forty-seven, and such other book or books as shall be from time to time issued under the direction and authority of the Lord Clerk Register, for which no more than the prime cost shall be charged; and it shall not be lawful for the Director of Chancery to use any other book or books in framing the said records; and the said book or books shall have an index or abridgment connected therewith, to be prepared in Chancery in the form and manner at present in use, or in any other form and manner to be pointed out or approved of by the Lord Clerk Register; and such index or abridgment shall be completed as soon as possible after the end of each year, and shall be printed and published, and printed copies thereof shall be distributed and disposed of in the manner at present in use, or in such other manner as shall be directed or approved of by the Lord Clerk Register: Provided always, that if a more general distribution or publication of such index or abridgment than to the official individuals to be fixed by the Lord Clerk Register shall be made, then and in that case copies of the index or abridgment aforesaid shall be sold to the public at the lowest rate which will defray the expense of printing the same, and an account of the

Transmis-
sion of
records.

10 and 11
Vict., c. 47,
§ 14.

sums to be received shall be exhibited by the Director of Chancery, and be examined and audited along with his other accounts; and such index or abridgment shall be prepared, printed, and distributed at latest by the first day of *July* in each year, beginning with the year One thousand eight hundred and sixty-nine, and the said record of services and other proceedings shall be at all times patent, and open to inspection in the office of Chancery, on payment of such a fee as shall be regulated by Act of Sederunt as aforesaid, and extracts from the said record, or certified copies of the said proceedings, shall be given to any one demanding the same, on payment of such fees as shall be fixed by Act of Sederunt, as aforesaid; and the Director of Chancery shall have the power, and is hereby required to direct and regulate the Sheriff-clerks in the several counties and the Sheriff-clerk of Chancery in regard to the manner of arranging and transmitting the petitions of service and procedure thereon, and also to prepare and furnish to the Sheriff-clerks of the several counties the requisite printed forms of the intimations to be sent by them through the post office to the Sheriff-clerk of Chancery when petitions of service shall be presented in their respective Courts, or when they shall have received notice to publish petitions that have been presented to the Sheriff of Chancery.

Clerks of Chancery to be remunerated for keeping Register, &c., by Act of Sederunt.

10 and 11 Vict., c. 47, § 15.

No person entitled to oppose a service who could not appear against a brief of inquest.

10 and 11 Vict., c. 47, § 16.

Appeal for jury trial.

10 and 11 Vict., c. 47, § 17.

39. The amount of the remuneration to the clerks of Chancery for keeping the records of services, and arranging the warrants, and preparing the indexes and abridgments, shall be fixed by Act of Sederunt as aforesaid; and such remuneration, together with the expense of printing the index or abridgment aforesaid, shall be paid from the fees collected in the office of Chancery, and an account thereof shall be exhibited by the Director of Chancery, and be examined and audited along with his other accounts.

40. No person shall be entitled to appear and oppose a service proceeding before the Sheriff in terms of this Act who could not competently appear and oppose such service if the same were proceeding under the brief of inquest according to the law and practice existing prior to the fifteenth day of *November* One thousand eight hundred and forty-seven; and all objections shall be presented in writing, and shall forthwith be disposed of in a summary manner by the Sheriff, but without prejudice to the Sheriff, if he see cause, allowing parties to be heard *viva voce* thereon.

41. In all cases in which competing petitions presented to the Sheriff in terms of the last-recited Act or of this Act have been or shall be conjoined as aforesaid, or in which any person has competently appeared or shall competently appear to oppose any petition of service presented to the Sheriff in terms of the said

recited Act or of this Act, it shall be competent to any of the parties, at any time before proof is begun to be taken by the Sheriff in manner before provided, to remove the proceedings to the Court or Session, by a note of appeal in or as nearly as may be in the form of a note of appeal under the "Court of Session Act 1868," which note of appeal shall be proceeded with in like manner with notes of appeal presented with a view to jury trial against judgments of the Sheriff-courts of *Scotland*, and such judgment shall be pronounced on the said note of appeal as shall be just; and in the event of it appearing proper that the cause should be tried by a jury, the same shall be tried according to the law and practice in trials by jury of causes in the Court of Session, and the jury shall be chosen and summoned in like manner as on such trials; and the verdict to be returned by the jury shall be equally final and conclusive with the verdicts returned in trials by jury in the said Court, but with all and the like remedies by bill of exceptions, motion for new trial, or otherwise, competent in regard to such verdicts: Provided always, that in every case in which the jury shall find a verdict, or in which the Court shall pronounce a judgment in favour of a party petitioning to be served, the Court shall, at the same time with applying such verdict, or pronouncing such judgment, remit to the Sheriff from whom the cause was appealed, or before whom such petitions or petition would have depended if the same had not been advocated or appealed before the commencement of this Act, with instructions to pronounce a decree serving the said party in terms of this Act, which decree may thereafter be extracted, and the extract thereof recorded and given out in manner and to the effect before provided.

42. In every case in which the Sheriff, acting under the said Act of the Tenth and Eleventh of Her Majesty Queen *Victoria*, chapter forty-seven, or under this Act, has pronounced or shall pronounce a decree refusing to serve a petitioner, or dismissing his petition, or repelling the objection of an opposing party, it shall be lawful to bring the said decree under review of the Court of Session by a note of appeal, in or as nearly as may be in the form of a note of appeal under the "Court of Session Act 1868:" Provided always, that such note shall be presented within fifteen, or, where the proceedings have been taken in the courts of *Orkney* or *Shetland*, twenty days from the date of the said judgment; and that where the decree has been pronounced after opposition duly entered or in competition, such note shall be intimated to the opposite party, and such note shall be proceeded with in like manner with notes of appeal against final judgments of the Sheriff-courts; and it shall be competent to the Court of Session, if it shall appear necessary for the right determination of the cause,

Where Sheriff refuses to serve petitioner, &c., judgment may be reviewed.

10 and 11
Vict., c. 47,
§ 18.

to allow further or additional evidence to be taken in any way or form in which evidence may be competently taken in ordinary civil causes depending before the said Court, or to appoint the cause, or special issues therein, to be tried by a jury, and such jury trial shall proceed in the same manner and to the like effect and with all and the like remedies as are before provided, and such judgment shall be pronounced on such note of appeal as shall be just: Provided always, that in every case in which the Sheriff has refused to serve, but in which the Court of Session shall determine that the party ought to be served, a remit shall be made to the Sheriff from whom such petition has been or shall be appealed, or before whom the same, if not advocated or appealed before the commencement of this Act, would have depended, with instructions to pronounce a decree serving the said party in terms of this Act, which decree may be thereafter recorded and extracted in manner and to the effect before provided: Provided also, that nothing herein contained shall prejudice the right of any person whose petition of service shall be refused without any opposing or competing party having appeared and been heard on the merits of the competition, to present a new petition at any time thereafter, or the right of either party in any of the proceedings authorised in the Court of the Sheriff, by this Act or the said Act of the Tenth and Eleventh of Her Majesty, chapter forty-seven, to bring under challenge whatever decree may have been or may be pronounced therein by process of reduction before the Court of Session on any competent ground.

Procedure when a decree of service is brought under reduction.

10 and 11 Vict., c. 47, § 19.

43. In every case in which a process of reduction of any decree of service pronounced by any Sheriff acting under the said last-recited Act or this Act has been or shall be brought before the Court of Session, it shall be competent to the said Court, if it shall appear necessary for the right determination of the cause, either to allow further or additional evidence to be taken in any way or form in which evidence may be competently taken in ordinary civil causes depending before the said Court, or to appoint the cause, or special issues therein, to be tried by a jury; and such jury trial shall proceed in the same manner, and to the like effect, and with all and the like remedies as are before provided in regard to jury trials under notes of appeal, and such judgment shall be pronounced in the said process as shall be just: Provided always, that wherever the decree of the Sheriff brought under reduction has proceeded on competing petitions conjoined as aforesaid, and the Court of Session shall determine that a different person shall be served from the person preferred by the Sheriff, a remit shall be made to the Sheriff acting under this Act before whom the said competing petitions depended, or to the Sheriff before whom the same would have depended if the said decree had

not been pronounced before the commencement of this Act, with instructions to pronounce a decree serving such different person in terms of this Act, which decree may be thereafter recorded, and an extract thereof given out in manner and to the effect above provided; and in any case of reduction of a service the judgment shall, unless and until reversed by the House of Lords on appeal, be conclusive, as between the parties to the suit, against the party whose service is reduced, and shall have the same effect as if the action had contained a conclusion of declarator that the party served was not entitled to be served in the character claimed, and judgment had been pronounced in terms of that conclusion.

Effect of the
decree of
reduction.

44. All proceedings authorised by the present Act to be taken in the Court of Session in reference to appeals from the Sheriff or to reduction of decrees of service shall commence and be carried on in the same manner with proceedings of the same description in ordinary civil causes; and all judgments to be pronounced by the Court of Session in such proceedings in terms of this Act, or in the corresponding proceedings in terms of the said last-recited Act, shall be equally final and conclusive as the judgments pronounced by the said Court in ordinary civil causes, and shall not be liable to review by reduction or otherwise, save and except to such extent and effect as judgments by the said Court in ordinary civil causes are so liable: Provided always, that it shall be competent to appeal against the said judgments to the House of Lords in like manner as against judgments of the Court in ordinary civil causes aforesaid.

Forms and
effect of
procedure
in the Court
of Session.

10 and 11
Vict., c. 47,
§ 20.

45. The whole provisions of "The Court of Session Act 1868," shall, in so far as possible, apply to notes of appeal and processes of reduction under this Act, and to all advocations from the Sheriff, and to all processes of reduction of decrees of service in dependence in the Court of Session at the commencement of this Act, and to all advocations which may after the commencement of this Act come before the Inner-House of the Court of Session by report or reclaiming note from any Lord Ordinary: Provided always, that the advocations depending before the Outer-House of said Court at the commencement of this Act shall be disposed of in the Outer-House, according to the law and practice existing prior to the commencement of the said "Court of Session Act 1868."

"Court of
Session Act
1868" to
apply to
appeals and
reductions,
&c., under
this Act.

[New.]

46. On being recorded and extracted as aforesaid every decree of special service pronounced in virtue of the said recited Act Tenth and Eleventh of the reign of Her present Majesty, chapter forty-seven, in favour of any person who shall be in life at the passing of this Act, and every decree of special service to be pro-

A decree of
special ser-
vice, besides
operating as
a retour,
shall have the
opera-

tion and
effect of a
disposition
from the de-
ceased to his
heirs and
assignees.

10 and 11
Vict., c. 47,
§§ 21, 22.

[*Ver.*]

nounced in virtue of this Act, shall, to all intents and purposes, unless and until reduced, be held equivalent to and have the full legal operation and effect of a disposition in ordinary form of the lands contained in such service, granted by the person deceased being last feudally vest and seised in the said lands to and in favour of the heir so served, and to his other heirs and successors entitled to succeed under the destination of the lands contained in the deceased's investiture thereof, but under the whole conditions and qualifications of such investiture as set forth or referred to in such extracted decree, containing the various clauses set forth in No. 1 of Schedule (B) hereto annexed, in the case of lands not held by burgage tenure, and in No. 2 of Schedule (B) hereto annexed, in the case of lands held by burgage tenure, although the deceased should have died in nonage, or been of insane mind, or laboured under any disability whatever, and as if a disposition had been granted in these terms by the deceased when of full age and capacity to grant it; and in the case of lands not held by burgage tenure, such extracted decree shall infer that the same are to be holden in the manner, and subject to the provisions enacted and provided in the sixth section of this Act in the case of conveyances in which no manner of holding is expressed; and in the case of lands held by burgage tenure such extracted decree shall infer that the same are to be holden of Her Majesty in free burgage; [and in either case such extracted decree shall be held from the date of such recording to vest in the heir so served a personal right to the lands therein contained, and to render said lands liable to all his debts and deeds, and to the diligence of his creditors, as well after his death as during his life, which right shall be transmissible to the heirs and successors of the heir so served entitled to succeed to the said lands under the destination thereof as aforesaid, and also to his assignees, legal as well as voluntary, except in so far as such transmission shall be effectually prohibited by the titles under which said lands are held;] and in order that the feudal title may be completed in the person of the heir so served, it shall be lawful and competent for him to use such extracted decree in the same manner and to the same effect as if such extracted decree were actually a disposition of the nature above mentioned, and in particular he shall be entitled to record the same in the appropriate Register of Sasines as a conveyance under this Act, along with a warrant of registration thereon on his behalf; and such extracted decree and warrant of registration, upon being so recorded in favour of such heir, shall form as effectual an investiture in favour of such heir in the lands where the same are held by burgage tenure as if cognition and entry had taken place in due form, and an instrument of cognition and sasine in regard to such lands, and in favour of such heir, had at the date of so recording such extracted decree and warrant, or

such instrument of sasine, been expedite and recorded in the Burgh Register of Sasines, according to the law and practice prior to the first day of *October* One thousand eight hundred and sixty, and in the lands where the same are not held by burgage tenure, holding base of the deceased and his heirs, until confirmation thereof shall be granted by the deceased's superior as if such investiture had been created by a disposition from the deceased as aforesaid, recorded, with warrant of registration thereon as aforesaid, in the appropriate Register of Sasines, in favour of such heir at the date of so recording the said extracted decree of service; [and in order that the feudal title to said lands may be completed in the person of the said heirs and successors and assignees of the heir so served not having completed a feudal title thereto in his own person, it shall be lawful and competent to such heirs, successors, and assignees to use such extracted decree as if the same had been an unrecorded conveyance of the said lands in favour of the heir so served to which they had acquired right, and to complete their titles to said lands in the manner and to the effect provided by this Act in the case of a party having right to an unrecorded conveyance:] Provided always, that notwithstanding of any prohibition against subinfeudation or alternative holding contained in the charter or contract or other deed by which the vassal's right is constituted, the titles so completed shall, in the case of lands not held by burgage tenure, form a valid feudal investiture in favour of the heir so served, or of his heirs, successors, or assignees, as the case may be, without prejudice to the right of the superior to require the heir so served, or his heirs, successors, and assignees, as the case may be, to enter forthwith as accords of law, and to deal otherwise with the heir so served, and his heirs, successors, and assignees as vassals unentered: Provided also, that nothing herein contained shall be held to repeal or alter an Act of the Parliament of *Scotland* passed in the year One thousand six hundred and sixty-one, intituled *Act concerning Apperand Heirs, their payment of their predecessors' and their own debts*, or an Act of the said Parliament passed in the year One thousand six hundred and ninety-five, intituled *Act for obviating the Frauds of Apperand Heirs*.

[*New.*]

47. No decree of special service obtained in virtue of the said recited Act Tenth and Eleventh of the reign of her present Majesty, chapter forty-seven, or to be obtained in virtue of this Act, shall operate or be held as equivalent to or as implying a general service to the deceased in the same character, except as to the particular lands therein embraced; and every such decree of special service shall infer only a limited passive representation of the deceased, and the person thereby served as heir shall be liable in respect of such service for the deceased's debts and deeds only to the extent or value of the lands embraced by such special service, and no further.

A special service not to infer a general representation, either active or passive.

10 and 11
Vict., c. 47,
§ 23.

Petitioner
for special
service may
petition for
general ser-
vice.

10 and 11
Vict., c. 47,
§ 24.

48. In any petition for special service, in whatever character, it shall be competent to the petitioner to pray for general service in the same character as that in which special service is sought, and decree may be pronounced in terms of such prayer as well as for special service; and no further notice or publication of the petition of service shall in such case be necessary than is hereby required for such petition of special service.

A general
service may
be applied
for and ob-
tained to a
limited ef-
fect by an-
nexing a
specifica-
tion;

10 and 11
Vict., c. 47,
§ 25.

49. It shall be lawful for any person presenting a petition for general service to a deceased person, to state in such petition, in the form or as nearly as may be in the form No. 1 of Schedule (R) hereunto annexed, that he desires the effect thereof to be limited to certain lands which belonged to the deceased, and which shall be embraced in a particular specification thereof to be annexed to such petition for general service, which specification shall be in the form or as nearly as may be in the form No. 2 of the said Schedule (R), and shall be subscribed by the petitioner or his mandatory; and in preparing an abstract of such petition for insertion in the Minute Book of the Court in which it shall be presented, and for publication, it shall be described as a petition for general service with specification annexed; and the Sheriff to whom such petition for general service with specification annexed shall be presented shall, in pronouncing decree of service on such petition, make reference to the specification annexed thereto, and shall limit such decree of service to the lands described in the said specification, and the effect of such decree shall accordingly be taken and held in law to be so limited; and a copy of such specification shall be embodied in the extract of the said decree, and recorded as part thereof; and every such decree of general service obtained in virtue of said last recited Act or of this Act, with specification annexed, shall infer only a limited passive representation of the deceased; and the person thereby served as heir shall be liable in respect of such service for the deceased's debts and deeds only to the extent or value of the lands contained in the relative specification.

and it shall
infer only a
limited pas-
sive repre-
sentation.

Jurisdiction
of the
Sheriff of
Chancery.

10 and 11
Vict., c. 47,
§ 27.

50. The Sheriff of Chancery appointed or to be appointed in virtue of this Act shall have and possess such and the like authority and jurisdiction to entertain, try, and adjudicate, but in the manner prescribed and directed by this Act, all questions of and relating to the service of heirs, as the Sheriff of Chancery appointed in virtue of the said recited Act Tenth and Eleventh of the reign of her present Majesty, chapter forty-seven, or any Sheriff or Judge Ordinary, now has and possesses in any case competent before such Sheriff or Judge Ordinary, or in any case now or formerly competent before the Sheriff of *Edinburgh* acting on special commission; and such Sheriff of Chancery shall hold his

court in any court-room within the Parliament or new Session-house of *Edinburgh* which has been or may be assigned by the Lords of Session for that purpose, or in any other place which may be so assigned.

51. It shall be competent to the said Court of Session, and they are hereby authorised and required from time to time to pass such Acts of Sederunt as shall be necessary or proper for regulating in all respects the proceedings under this Act before the Sheriff of Chancery or Sheriffs of counties, and following out the purposes of this Act in regard of these proceedings, and regulating the times at which the Sheriff of Chancery shall hold his courts, and the fees to be paid in respect of any of the proceedings to be taken in virtue hereof; and the charges to be made by agents and solicitors, whether in the Inferior Court or Court of Session, for any proceedings under this Act, shall be audited and taxed in the same manner as charges for other judicial proceedings in the said courts respectively are audited and taxed: Provided always that accounts of expenses in the Sheriff-court of Chancery shall be audited and taxed by the auditor of the Court of Session, and the decree for such expenses shall be extractable by the extractor of the Court of Session in the same manner as a decree of that court, and all such decrees shall be held to be interim decrees, and the warrants shall, after extract, be retransmitted to the Sheriff-clerk of Chancery.

Power to the Court of Session to pass Acts of Sederunt.

10 and 11 Vict., c. 47, § 28.

52. The Sheriff of Chancery, and Sheriff-clerk of Chancery, and Clerk to the Presenter of Signatures in Exchequer appointed in virtue of the said recited Act Tenth and Eleventh of the reign of Her present Majesty chapter forty-seven, shall, until their respective deaths or resignations, be appointed, and are hereby respectively appointed to be Sheriff of Chancery, and Sheriff-clerk of Chancery, and Clerk to the Presenter of Signatures in Exchequer, for the purposes of this Act; and after the death or resignation of the said Sheriff of Chancery, it shall be lawful for Her Majesty from time to time to appoint a fit person, being a person qualified for the office of Sheriff of a county in *Scotland*, to be the Sheriff of Chancery for the purposes of this Act, and after the death or resignation of the present Sheriff-clerk of Chancery, and Clerk to the Presenter of Signatures in Exchequer, also to appoint a fit person to act both as Sheriff-clerk of Chancery and as clerk to the Presenter of Signatures in Exchequer for the purposes of this Act.

Appointment of Sheriff of Chancery.

10 and 11 Vict., c. 47, § 29.

53. It shall be lawful and competent for agents qualified to practise before the Court of Session or before any Sheriff Court, to

Agents may practise before Sheriff-courts.

10 and 11
Vict., c. 47,
§ 31. practise before the Sheriff of Chancery as well as in the ordinary Sheriff-courts in petitions of service.

Salaries of
Sheriff of
Chancery
and Sheriff-
clerk of
Chancery.

10 and 11
Vict., c. 47,
§ 32.

54. The Sheriff of Chancery and Sheriff-clerk of Chancery shall respectively receive such salaries as shall from time to time be fixed by the Commissioners of Her Majesty's Treasury, and such salaries, and any increase thereof, shall be payable out of the funds from which the salaries of Sheriffs of counties are payable; and the said Sheriff shall be entitled to a retiring annuity, subject to the same conditions and provisions as Sheriffs of Counties, and payable out of the same funds from which the salaries and annuities of the said Sheriffs are payable.

Salary to be
regulated by
the Commis-
sioners of
the Trea-
sury on
Vacancy.

10 and 11
Vict., c. 47,
§ 33.

Compensa-
tion already
awarded not
to be affect-
ed.

10 and 11
Vict., c. 47,
§ 34.

55. Whenever any vacancy shall occur in the office of Sheriff of Chancery, it shall be lawful for the Commissioners of Her Majesty's Treasury, or any two or more of them, to regulate the salary of the Sheriff of Chancery as the then circumstances of the office may require.

56. Nothing herein contained shall affect the right of any person to whom compensation shall have been awarded by way of annuity in virtue of the provisions of the thirty-fourth section of the last-recited Act to receive such compensation: Provided always, that if any person to whom such compensation may have been awarded has been or shall hereafter be appointed to any other public office, such compensation shall be accounted *pro tanto* of the salary payable to such person in respect of such other office while he shall continue to hold the same.

Compensa-
tion to be
paid.

10 and 11
Vict., c. 47,
§ 35.

57. The several compensations which may have been awarded under the authority of the last-recited Act shall be payable out of the monies which, by the Acts of the seventh and tenth years of the reign of Her Majesty Queen *Anne*, were made chargeable with the fees, salaries, and other charges allowed or to be allowed for the keeping up of the Courts of Session, Justiciary, or Exchequer in *Scotland*.

Provisions
as to de-
pending pe-
tition for
service.

[*New.*]

58. All petitions for service which, at the commencement of this Act, shall be depending before the Sheriff of Chancery or the Sheriff of any county acting under the said Act of the Tenth and Eleventh of Her Majesty Queen *Victoria* shall thereafter depend before the Sheriff of Chancery or the Sheriff of such county respectively acting under this Act, and shall be taken up by such Sheriff at the stage at which the proceedings in such petitions shall have arrived at the commencement of this Act, and shall be thereafter proceeded with by such Sheriff according to the provisions of this Act, as if the same had been presented to such

Sheriff after the commencement of this Act; and in all cases in which before or after the commencement of this Act a petition for service shall have been or shall be advocated or appealed to the Court of Session, or a process of reduction shall have been or shall be brought of any decree of service pronounced before or after the commencement of this Act, any remit which in such process of advocacy or appeal or reduction has been or shall be made by the said Court to the Sheriff may and shall be executed and carried out by the Sheriff to whom the petitions or petition advocated or appealed, or in which the decree under reduction may have been pronounced, was originally presented, or before whom the same would have depended if the same had not been presented till after the commencement of this Act.

59. Whereas it is inconvenient in practice to libel and conclude for general adjudication of lands as the alternative only of special adjudication, in terms of an Act of the Parliament of *Scotland* passed in the year One thousand six hundred and seventy-two: It shall not be necessary to libel or conclude for special adjudication, and it shall be lawful to libel and conclude and decern for general adjudication without such alternative, anything in the said last-recited Act of the Parliament of *Scotland*, or in any other Act or Acts of the Parliament of *Scotland* or of *Great Britain* or of the United Kingdom of *Great Britain* and *Ireland*, to the contrary notwithstanding.

Unnecessary to libel and conclude for decree of special adjudication.

10 and 11
Vict., c. 48,
§ 18.

10 and 11
Vict., c. 41,
§ 10.

60. It shall not be competent to use letters of general or special charge, or general special charge, but in an action of constitution of an ancestor's debt or obligation against his unentered heir the citation on and execution of the summons in such action shall be held to imply and be equivalent to a general charge, the *induciae* of which shall expire with the *induciae* of such summons, and shall infer the like certification with such general charge; and it shall thereafter be competent to adopt under such summons the same procedure in all respects, and to pronounce the same decree, which would have been competent had such summons been preceded by letters of general charge duly executed against such heir, according to the law and practice in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven, which decree shall be a valid decree of constitution; and in an action of adjudication, whether for debt or in implement, against such heir following on such decree of constitution, or in an action of adjudication against an unentered heir founded on his own debt or obligation, the citation on and execution of the summons of adjudication shall be held to imply and be equivalent to a special charge or general special charge, as the circumstances may require, the *induciae* of which charge shall expire with the

General and special and general special charges to be no longer necessary.

10 and 11
Vict., c. 48,
§ 16.

10 and 11
Vict., c. 49,
§ 8.

21 and 22
 Vict., c. 76,
 § 27.
 23 and 24
 Vict., c. 143,
 § 16.

inducia of such summons, and shall infer the like certification with such special charge or general special charge, as the case may be; and it shall thereafter be competent to adopt under such summons the same procedure in all respects, and to pronounce the same decree, which would have been competent had such summons been preceded by letters of special charge or general special charge, as the case may be, duly executed against such heir according to the law and practice in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven; which decree shall be a valid decree of adjudication, whether for debt or in implement; and in actions of constitution and adjudication against an unentered heir on account of his ancestor's debt or obligation, for the purpose of attaching the ancestor's heritable estate, it shall not be necessary to raise a separate summons of constitution and a separate summons of adjudication, but both actions may be combined in one summons, whether the heir renounce the succession or not, and the citation on and execution of such summons shall be held to imply and be equivalent to a general charge, or to a general charge and a special charge, or to a general charge and a general special charge, as the circumstances of the case may require, the *inducia* of which shall expire with the *inducia* of such summons, and shall infer the like certification with such general charge, or general charge and special charge, or general charge and general special charge, as the case may be; and in such combined action of constitution and adjudication it shall be competent to adopt the same procedure in all respects, and to pronounce the same decree or decrees, which would have been competent had such summons been preceded by letters of general charge duly executed against such heir according to the law and practice in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven, or which would have been competent had a separate summons of constitution and a separate summons of adjudication been raised against such heir, and been preceded respectively by letters of general charge, or of special charge, or general special charge, duly executed against such heir according to the law and practice in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven, which decree or decrees shall be valid decrees of constitution, or of adjudication, whether for debt or in implement, or of constitution and adjudication, whether for debt or in implement, as the case may be; and in such combined action of constitution and adjudication, whether for debt or in implement, it shall be competent to pronounce decree of constitution and adjudication in one and the same interlocutor, and to extract the same in one and the same extract, which decree shall have the full force and effect of a decree following upon a summons of constitution preceded by letters of general charge, and

also of a decree following upon a summons of adjudication, whether for debt or in implement, preceded by letters of special or general special charge, as the case may be; anything in an Act of the Parliament of *Scotland* passed in the year One thousand five hundred and forty, and in another Act of the Parliament of *Scotland* passed in the year One thousand six hundred and twenty-one, or in any other Act of the Parliament of *Scotland* or of *Great Britain*, or of the United Kingdom of *Great Britain* and *Ireland*, or any law or practice to the contrary notwithstanding.

61. Actions of constitution and actions of constitution and adjudication against an apparent heir on account of his ancestor's debt or obligation, for the purpose of attaching the ancestor's heritable estate, and actions of adjudication against such heir on account of his own debt or obligation, for the purpose of attaching such estate, may be insisted in at any time after the lapse of six months from the date of his becoming apparent heir, any law or practice to the contrary notwithstanding.

Actions of constitution and adjudication against apparent heir may be insisted in after the lapse of six months.

62. In all cases a decree of adjudication, whether for debt or in implement, or a decree of constitution and adjudication, whether for debt or in implement, or a decree of sale, if duly obtained in the form prescribed by this Act, or obtained, if prior to the commencement of this Act, in the form then in use, shall, except in the case where the subjects contained in the decree of adjudication or of constitution and adjudication are heritable securities, be held equivalent to and shall have the legal operation and effect of a conveyance in ordinary form of the lands therein contained granted in favour of the adjudger or purchaser by the ancestor of such apparent heir, or by the owner or seller of the lands adjudged or sold, although in non-age or of insane mind, to be holden in the case of lands not held by burgage tenure in the manner and to the effect and subject to the provisions enacted and provided by the sixth section of this Act in the case of conveyances in which no manner of holding is expressed, and to be holden of Her Majesty in free burgage in the case of lands held by burgage tenure; and it shall be lawful and competent to such adjudger or purchaser to complete feudal titles to said lands, not only by infestment on such decree as a conveyance or unrecorded conveyance, as the case may be, in the manner provided by this Act, but also when the lands are not held by burgage tenure, by obtaining from the superior charter of adjudication or of sale of said lands and expeding infestment on such charter in common form or as a conveyance or unrecorded conveyance, as the case may be, in the manner provided by this Act, or where the ancestor of such apparent heir, or the owner or seller of the lands adjudged or sold, shall have been or shall be entered with his su-

21 and 22
Vict., c. 76,
§ 27.
23 and 24
Vict., c. 143,
§ 16.

Effect of a
decree of ad-
judication
or sale.

10 and 11
Vict., c. 48,
§ 19.
21 and 22
Vict., c. 76,
§ 27.

perior, or in a situation to charge such superior under the powers in this Act contained, to grant entry by confirmation, by taking infestment on such decree as a conveyance or unrecorded conveyance, as the case may be, in the manner provided by this Act, which infestment shall, with such decree, be an effectual feudal investiture in the said lands in terms of such decree, holding base of the party whose lands are adjudged or sold, and his heirs, until confirmation thereof shall be granted by the superior of the lands in the same manner and to the same effect as if the party whose lands are sold or adjudged had granted a disposition of the lands to the adjudger or purchaser in the terms of the said decree, with an obligation to infest *a me vel de me* to be completed by confirmation and a precept of sasine, and the adjudger or purchaser had been infest on such precept, and the effect of the charter or writ of confirmation of such decree or of the infestment thus proceeding upon the same shall be to make the lands hold immediately of and under such superior; but the right of the superior to the composition payable by the adjudger or purchaser as due under the existing law is hereby reserved entire, and the adjudger or purchaser, by taking infestment on any such decree in any of the modes above mentioned, shall become indebted in such composition to the superior, and shall be bound to pay the same on the superior tendering a charter or writ or confirmation, whether such charter or writ shall be accepted or not, and the superior shall be entitled to recover such composition as accords of law; and it is hereby provided that such infestment on any such decree shall, without prejudice to any other diligence or procedure, be of itself sufficient to make the adjudication effectual in all questions of bankruptcy or diligence: Provided always, that where the investiture of any lands has imposed or shall impose a prohibition against subinfeudation or alternative holding, such adjudger or purchaser shall, in respect of such recorded decree or notarial instrument, and notwithstanding any such prohibition, be deemed and taken to be duly infest in the lands adjudged or sold as from the date of recording such decree or instrument, but without prejudice to the right of the superior to require such adjudger or purchaser to enter forthwith as accords of law, and to deal with such adjudger or purchaser as with a vassal unentered.

Signatures
for Crown
writs
abolished.

10 and 11
Vict., c. 51,
§ 1.

63. It shall not be necessary, in order to the obtaining of any Crown writ, that any signature shall be presented and passed in Exchequer, or that any precept shall be framed and issued thereon as preliminary to the granting of such writ, and all Crown writs shall be obtained in the manner directed by this Act, and not otherwise.

Crown writs
to be ob-

64. Any person seeking to obtain a Crown writ shall lodge or

cause to be lodged in the office of the Presenter of Signatures a draft of the proposed writ, as prepared by his agent, being a Writer to the Signet, whose signature shall be indorsed thereon, together with a short note, in the form or as nearly as may be in the form of Schedule (S) hereto annexed, praying for a Crown writ in terms of the said draft; and the date of lodging such note shall be marked thereon by the Presenter of Signatures or his clerk; and along with such note and draft there shall be lodged the last Crown writ and retour or decree of service of the lands, and all the title-deeds of the lands subsequent thereto, together with evidence of the valued rent when necessary, and an inventory and brief of the titles, according to the practice heretofore in use.

tained by
lodging a
draft thereof
and note
along with
the title-
deeds.

10 and 11
Vict., c. 51,
§ 2.

65. The draft Crown writ so lodged shall be forthwith revised by the Presenter of Signatures, who shall require the attendance of the agent of the person applying for the writ for the purpose of receiving his explanations; and the Presenter of Signatures shall thereafter proceed with the revision of the said draft, making such alterations and corrections as are necessary; and he shall, after his final revisal of such draft, authenticate each page thereof, and the several alterations and corrections thereon, if any, with his initials, and shall mark on such draft that the same has been revised by him, and also the date when such revisal was completed; and the fees on signatures payable prior to the first day of *October* One thousand eight hundred and forty-seven to the Presenter of Signatures shall be chargeable on the draft writ to be lodged and revised as aforesaid, and all other fees payable prior to that date to the Officers of Exchequer on signature shall cease and determine.

Draft Crown
writ be
revised.

10 and 11
Vict., c. 51,
§ 3.

66. If it shall appear that any mistake has occurred in the terms of the last Crown writ or retour or decree of service, to the prejudice of the Crown, the person applying for the writ shall further, on requisition made to him or his agent to that effect by order of the Presenter of Signatures, lodge the prior title-deeds of the said lands, and any other title-deeds of and concerning the same, in so far as such title-deeds may be in his possession or at his command, and in so far as the same may be necessary for the due revisal of the said draft on behalf of the Crown, and for the rectification of such mistake, which may be rectified accordingly; and, on the other hand, if the vassal shall allege any mistake to have occurred in the terms of the last Crown writ or retour or decree of service to his prejudice, the person applying for the writ shall be entitled, without such requisition, to lodge a note explaining the alleged mistake, and produce the prior titles of the said lands, and any other title-deeds or other deeds of and con-

Rectification
of mistakes
in former
titles.

10 and 11
Vict., c. 51,
§ 4.

cerning the same, in so far as these may be necessary for the due revision of the said draft and the rectification of such mistake, which may be rectified accordingly; but no such rectification shall in either case be allowed, nor the draft be held as finally revised or authenticated as such, until the same shall have been reported by the Presenter of Signatures to and approved of by the Lord Ordinary in Exchequer causes appointed in terms of an Act passed in the nineteenth and twentieth years of the reign of Her Majesty, chapter fifty-six, for constituting the Court of Session the Court of Exchequer in *Scotland*.

Intimation of proposed rectification to be made to solicitor for Commissioners of Woods and Forests.

[*New.*]

67. In every case where the draft of any Crown writ shall be laid before the Lord Ordinary in Exchequer causes, as before provided for, intimation thereof and of the relative report by the Presenter of Signatures, or note, as the case may be, shall be made by the agent applying for the writ to the solicitor in *Scotland* for the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, and the Lord Advocate shall be entitled to appear in name and on behalf of the Crown, and on behalf of the said Commissioners, or either of them, in all future proceedings relating to the said Crown writ; and the Lord Ordinary, before finally approving of any such draft writ, shall be satisfied that one calendar month's previous notice in writing of such draft having been laid before him has been given to the said solicitor, accompanied by a copy of the said draft writ, and of the report by the Presenter of Signatures, or note, as the case may be.

Presenter of Signatures, &c., may refer to copy of writ when withheld.

10 and 11 Vict., c. 51, § 5.

68. When the last Crown writ or retour or decree of service shall be withheld by the person applying as aforesaid, or cannot be so lodged from being in the possession of the proprietor of other lands therein contained, or from any other good cause, it shall be competent for the Presenter of Signatures, or for the person applying as aforesaid, to refer to the copy thereof engrossed in the Register of the Great Seal, or in the Register of Retours or Record of Services, and to procure exhibition thereof as evidence of the terms of such last Crown writ or retour or decree of service; and the Lord Clerk Register is hereby authorised and required to make such regulation as will enable the exhibition thereof to be obtained for the purpose aforesaid, upon the joint application of the person so applying and of the Presenter of Signatures.

Amount of Crown duties to be fixed.

10 and 11 Vict., c. 51, § 6.

69. The Presenter of Signatures shall also, with the aid of the Auditor of Exchequer, ascertain and fix the amount of composition or other duties due and payable to the Crown on granting such writ, and the amount of the same shall be marked on the said draft, and certified by the signatures of the said Auditor of

Exchequer and of the Presenter of Signatures; and in ascertaining and fixing the amount of such composition and other duties payable to the Crown there shall be no charge added for the expense of collecting the same, any law or practice to the contrary notwithstanding.

70. The person applying for such Crown writ shall be bound to pay to the clerk of the Presenter of Signatures the fees to be fixed in manner hereinafter provided, which fees shall be paid over by such clerk to the Director of Chancery, who shall be accountable therefor. Clerk's fees. 10 and 11 Vict., c. 51, § 7.

71. Such revised draft shall, so long as it is retained in the office of the Presenter of Signatures, be there open to the inspection of the party applying for the Crown writ or his agent, and a copy thereof shall be furnished on demand on payment of the fees to be fixed as hereinafter directed. Copy of revised draft to be furnished to the party. 10 and 11 Vict., c. 51, § 8.

72. Where no objections shall be stated to the draft as so revised, a docquet shall be put thereon certifying that the same is approved, which docquet shall be signed by the agent applying for the Crown writ and by the Presenter of Signatures, and the date of signing the same thereon set forth; and such draft, so docqueted, shall, without being given up to the party applying for the said writ or his agent, be officially transmitted by the Presenter of Signatures to the office of the Director of Chancery, and where such writ is to be engrossed on any deed or conveyance, such deed or conveyance shall be transmitted along with said draft, and such draft shall form a valid and sufficient warrant for the immediate preparation of the writ in Chancery in terms of such draft. If no objections, the revised draft to be attested, and the Crown writ prepared. 10 and 11 Vict., c. 51, § 9.

73. It shall be competent to apply for any Crown writ in manner before directed, and to revise the draft of the same, and in the event of the same being docqueted as revised and approved in manner aforesaid to prepare and deliver the writ as hereinafter directed at any period of the year, and notwithstanding that it shall not then be term time of the Court of Session acting as the Court of Exchequer in *Scotland* under the said Act passed in the Nineteenth and Twentieth years of the reign of Her present Majesty, chapter fifty-six. Crown writs may be applied for at any time. 10 and 11 Vict., c. 51, § 10.

74. It shall be lawful for the person applying for the Crown writ, if dissatisfied with the draft revised as aforesaid, to state objections thereto or against the amount of duties and composition thereon marked as payable; and such objections shall be set forth in a short written note of objections, without argument, Objections, if any, to draft Crown writ to be by a note. 10 and 11 Vict., c. 51, § 11.

to be lodged in the office of the **Presenter of Signatures**, subscribed by the agent of such person ; and the date of lodging such note of objections shall be marked thereon by the **Presenter of Signatures** or his clerk.

Objections,
how to be
disposed of.

10 and 11
Vict., c. 51,
§ 12.

75. Where any note of objections shall be so lodged, such note shall, together with the whole other proceedings, be laid before the said Lord Ordinary in Exchequer Causes, and the said Lord Ordinary shall hear the person so objecting, by himself, his counsel, or his agent, being a Writer to the Signet, and shall also hear any report or statement by the **Presenter of Signatures** ; and wherever it shall appear to the said Lord Ordinary that the said objections should to any extent receive effect he shall cause such alterations and corrections as shall appear to him proper, either with reference to the terms of the said draft, or to the amount of duties or other payments marked thereon as payable, to be made on such draft, or to be expressed in a separate paper marked as relative thereto, and shall authenticate such draft and relative paper with his signature ; and the said Lord Ordinary shall at the same time pronounce a judgment or deliverance, to be written on the note of objections, appointing the writ, as so altered and corrected, to be prepared and executed ; and the judgment or deliverance so pronounced shall form a valid and sufficient warrant for the preparation in Chancery of the writ as altered and corrected.

Procedure if
objections
repelled.

10 and 11
Vict., c. 51,
§ 13.

76. Wherever the said Lord Ordinary shall be of opinion that the said objection should not to any extent receive effect, he shall pronounce a judgment, to be written on the said note of objections, repelling the said objections ; and the judgment or deliverance so pronounced shall form a valid and sufficient warrant for the preparation in Chancery of the writ as revised by the **Presenter of Signatures** in manner before directed.

Refusal to
revise, how
to be com-
plained of.

10 and 11
Vict., c. 51,
§ 14.

77. Wherever the **Presenter of Signatures** shall be of opinion that the person applying for the Crown writ has not produced a title sufficient to show that he has right to obtain the same, the **Presenter of Signatures** shall mark on the said draft that the same is refused for want of sufficient production of titles, adding thereto his signature and the date of affixing the same ; and his clerk shall intimate such refusal to the agent of the said person, and shall, on demand, return the draft to such agent ; and in every such case it shall be competent for the person who shall have applied for the writ to bring such refusal under review of the said Lord Ordinary by a note of objections lodged in manner aforesaid ; and the said Lord Ordinary shall, after considering such note, and hearing parties thereon in manner aforesaid, sus-

tain or repel the objections, or pronounce such judgment or deliverance thereon as shall be just; and if the said Lord Ordinary shall be of opinion that a sufficient title has been shown to authorise the writ being granted, he shall in that case remit to the Presenter of Signatures to proceed with the revisal of the draft in manner before mentioned.

78. As soon as the draft Crown writ shall have been docketed as revised and approved in manner before provided, or, in case of objections being stated, as soon as the same shall have been disposed of by the said Lord Ordinary in manner before directed, the said draft shall be officially transmitted by the Presenter of Signatures to the office of the Director of Chancery; and where such writ is to be engrossed on any deed or conveyance, such deed or conveyance shall be transmitted along with said draft, and immediately thereafter the writ shall be engrossed in the office of the Director of Chancery in terms of the draft as finally adjusted, signed, and officially transmitted as aforesaid, and shall be signed by the Director of Chancery or his Depute or Substitute; and it shall not be necessary to have the Seal appointed by the Treaty of Union to be kept and used in *Scotland* in place of the Great Seal thereof formerly in use affixed to any writs from Her Majesty, or the Seal of the Prince if the writs be of lands holden of the Prince, and a separate Seal be then in use for such writs, affixed to any writs from the Prince, unless the receivers of such writs shall require the appropriate Seal to be affixed; and when the appropriate Seal is so required and affixed, the fact shall be stated at the conclusion of the writ, and the date on which the Seal is actually appended stated; and all Crown writs shall be in all respects as valid and effectual without the Seal as if the same had been appended thereto; and the writ when signed, or, if required, signed and sealed, as the case may be, shall be recorded in Chancery in manner hereafter provided, and shall be thereafter delivered to the person applying for the same, or his agent, in like manner in all respects, and on payment of the same fees and charges, as at present used and observed and payable, and the date of signing, or of sealing when the Seal is appended, shall in all cases be held and expressed to be the date of the writ: Provided always that before the writ shall be so delivered payment shall be made to the officers who are or may be entitled to receive the same of the amount of duties and compositions payable to Her Majesty or the Prince, ascertained and fixed as aforesaid; and a record of the amount of duties payable to Her Majesty or the Prince shall be kept in Chancery, so as to form a charge against the officer or other person appointed to receive the same.

Crown writ as revised to be engrossed and delivered.

10 and 11 Vict., c. 51, § 15.

21 and 22 Vict., c. 76, § 32.

79. The engrossed Crown writ, signed or signed and sealed, Crown writ to be valid.

10 and 11
Vict., c. 51,
§ 16. recorded and delivered as aforesaid, shall be in all respects a warrant for infeftment in the lands described or referred to in the said writ, as valid and effectual as any Crown writ of the same description hitherto in use to be granted, and notwithstanding that the same has not followed on any signature presented and passed in Exchequer or precept directed thereon, any law or usage heretofore existing to the contrary notwithstanding.

Ceremony of
resignation
abolished.
10 and 11
Vict., c. 51,
§ 17. **80.** Where a Crown charter or Crown writ of resignation is applied for it shall not be necessary to go through any form or ceremony of resignation, but in all cases resignation shall be held to be duly made and completed in terms of the procuratory or clause of resignation, which forms the warrant for resignation, by the ingiving of the note applying for the charter or writ as aforesaid, and as of the date of such ingiving; and every such charter or writ of resignation shall be as valid and effectual as any Crown charter or Crown writ of resignation heretofore granted, any law or usage to the contrary notwithstanding.

Investiture
by resignation
from
the Crown.
21 and 22
Vict., c. 76,
§ 8. **81.** Where lands are held of the Crown, and a new investiture by resignation shall be required, it shall be competent for the person, in right of the deed or conveyance which is the warrant for resignation, to apply to the Presenter of Signatures for a Crown charter of resignation, or a Crown writ of resignation, in or as nearly as may be in the forms hereinafter respectively provided, and such Crown writ of resignation shall be engrossed on the said deed or conveyance, and it shall be competent to record in the appropriate Register of Sasines such deed or conveyance, with the writ engrossed thereon, and warrant of registration also, in the form or as nearly as may be in the form No. 1 of Schedule (H) hereto annexed; and the same being so recorded shall have the same legal force and effect in all respects as if a Crown charter of resignation had been granted, and such charter had been followed by an instrument of sasine expedite in favour of the party on whose behalf such deed or conveyance and writ and warrant are presented for registration, and so recorded at the date of recording such deed or conveyance and writ and warrant: Provided always that the recording of such deed or conveyance along with such writ and warrant shall not have the effect of an instrument of sasine following on such deed or conveyance.

Investiture
by confir-
mation from
the Crown.
21 and 22
Vict., c. 76,
§ 6. **82.** Where lands are held of the Crown, and a confirmation of any deed or conveyance recorded in the appropriate Register of Sasines shall be required, it shall be competent for the person in right of such deed or conveyance to apply to the Presenter of Signatures for a Crown charter of confirmation, or a Crown writ of confirmation in or as nearly as may be in the forms hereinafter

respectively provided, and such Crown writ of confirmation shall be engrossed on the said deed or conveyance, and shall have the same legal force and effect as a Crown charter of confirmation of such deed or conveyance.

83. Crown writs and Crown charters of resignation may be respectively in the forms or as nearly as may be in the forms of Nos. 1 and 2 of Schedule (T) hereto annexed; and Crown writs and Crown charters of confirmation may be respectively in the forms or as nearly as may be in the forms of Nos. 3 and 4 of said Schedule (T); and Crown writs and Crown charters of any other denomination or nature, except Crown precepts or Crown writs of *clare constat*, may be in forms as nearly approaching as may be to the examples given in the said Schedule (T), the necessary alterations being made as the denomination or nature of the particular writ or charter may require; and all Crown writs and Crown charters, including Crown precepts and Crown writs of *clare constat*, when granted in or as nearly as may be in any of the forms provided by this Act, shall have the same force and legal effect in all respects as if the same had been granted in any corresponding forms heretofore in use or competent, and shall be read and construed as largely and beneficially in all respects for the holders thereof as if the same had been expressed in and had contained the whole terms and words which are now used, or were used prior to the first day of *October* One thousand eight hundred and forty-seven, in granting such Crown writs or charters: Provided that when the lands to which the deed or conveyance on which any Crown writ shall be engrossed are held under a deed of entail, or under any real burdens or conditions or provisions or limitations whatsoever appointed to be fully inserted in the investitures of such lands, it shall not be necessary in such writ to insert or refer to the destination of heirs, the conditions, provisions, and prohibitory, irritant, and resolute clauses, or clause authorising registration in the Register of Tailzies contained in such deed of entail, provided the same are inserted at full length in such deed or conveyance or are referred to therein in manner provided by the ninth section of this Act, or to insert or refer to such real burdens or conditions or provisions or limitations, provided the same are inserted at length in such deed or conveyance, or are referred to therein in manner provided by the tenth section of this Act.

84. When any person who has obtained himself specially served as heir to a deceased ancestor shall seek to obtain a Crown writ of *clare constat* or precept from Chancery for infetting himself as such heir, he shall, in like manner as before directed, lodge, or caused to be lodged in the office of the Presenter of Signatures

Crown writs and Crown charters may be in the forms given in Schedule (T).

21 and 22 Vict., c. 76, §§ 6, 8.

Crown writs or precepts to heirs specially served, how to be obtained.

10 and 11 the retour or decree of his special service, and a draft of the pro-
 Vict., c. 51, posed writ or precept prepared by his agent, being a Writer to the
 § 18.
 21 and 22 Signet, in the form or as nearly as may be in the forms as the
 Vict., c. 76, case may require of Schedule (U), Nos. 1 or 2, hereto annexed,
 § 11.
 8 and 9 together with a note in the terms or to the effect before directed,
 Vict., c. 35, and the last Crown writ and other titles of the lands as aforesaid,
 § 6. and the said draft shall be revised by the Presenter of Signatures
 on behalf of the Crown in manner aforesaid; and all the provi-
 sions hereinbefore contained with regard to drafts of Crown writs
 shall be, and the same are hereby made applicable to such drafts
 of writs of *clare constat* or precepts from Chancery, and the draft
 of such writ of *clare constat* or precept, when docketed as revised
 and approved in manner before provided, or in the case of objec-
 tions, the judgment or deliverance of the said Lord Ordinary shall
 be officially transmitted to the office of the Director of Chancery
 in manner before provided, and shall form a valid and sufficient
 warrant for the preparation in Chancery of the writ of *clare constat*
 or precept in terms of the draft as corrected and approved, and
 the same shall forthwith be engrossed in the office of the Director
 of Chancery in terms of the draft as finally adjusted, signed, cor-
 rected, or approved, and officially transmitted as aforesaid, and
 shall be signed by the Director of Chancery or his Depute or Sub-
 stitute, and recorded in Chancery in manner hereinafter directed,
 and shall be thereafter delivered to the person applying for the
 same or his agent, in like manner in all respects and on payment
 of the same fees and charges as at present used and observed and
 payable; and the writ of *clare constat* or precept, when so engrossed
 and delivered, and with warrant of registration thereon recorded
 in the appropriate Register of Sasines, shall have the same legal
 force and effect in all respects as if a precept from Chancery had
 been granted, and an instrument of Sasine thereon had been duly
 expedite and recorded in favour of the person or persons on whose
 behalf such writ of *clare constat* or precept is presented for regis-
 tration at the date of recording the said writ or precept: Provided
 always that before the writ of *clare constat* or precept is so deli-
 vered, payment shall be made of the amount of duties and com-
 position payable to the Crown or Prince, as the same shall have
 been fixed in manner above mentioned.

8 and 9
 Vict., c. 35,
 § 6.

Crown writs
 or precepts
 of *clare con-
 stat* may
 also be
 granted to
 heirs hold-
 ing only a
 general
 service.

85. It shall not be necessary that any Crown writ of *clare
 constat* or precept from Chancery for infefting heirs shall proceed
 exclusively on special service in the particular lands for infeft-
 ment in which such writ or precept is sought, but it shall be com-
 petent for any person to apply for and obtain such writ or precept,
 on lodging along with the last Crown writ or other titles as afore-
 said an extract retour or decree of general service, duly expedite
 and recorded, instructing the propinquity of such person to the

party who died last vest and seised in the lands, or the character of heir otherwise belonging to him, and establishing his right to succeed to the said lands; and the writ of *clare constat* or precept granted on production of such extract retour or decree of general service shall be in the form or as nearly as may be in the form of the said Schedule (U), No. 1 or 2, hereto annexed, and shall be applied for, revised, and obtained in like manner as hereinbefore directed in regard to Crown writs; and the said writ or precept, when recorded, with warrant of registration thereon, in the appropriate Register of Sasines, shall be as valid and effectual as a writ or precept recorded under the provisions of the eighty-fourth section hereof.

10 and 11
Vict., c. 51,
§ 19.

86. All Crown writs of *clare constat* or precepts issued from the office of Chancery shall be null and void unless recorded, with a warrant of registration thereon, on behalf of the heirs in whose favour they are granted, in the appropriate Register of Sasines before the first term of *Whitsunday* or *Martinmas* posterior to the date of such writ or precept, without prejudice to a new writ of *clare constat* or precept being issued; and the proper officer in Chancery shall receive at the same time certain fees on behalf of Sheriffs, Sheriff-substitutes, and Sheriff-clerks of the counties in which the lands lie, and on which sasine would have been taken according to the form in use prior to the first day of *October* One thousand eight hundred and forty-five, and to whom such officer shall account for the same in place of the fees which they had been in use to receive, but such fees shall be paid only during the existence of the respective interests of the Sheriffs, Sheriff-substitutes, and Sheriff-clerks who held these respective offices at the said first day of *October* One thousand eight hundred and forty-five, in their respective offices; and the Lords of Council and Session are hereby authorised and required by an Act or Acts of Sederunt to regulate and determine the amount of the fees to be so received on behalf of each such Sheriff, Sheriff-substitute, and Sheriff-clerk, having due regard to the existing interests of each.

Crown writs
or precepts
of *clare constat* to be
null unless
recorded
before first
term after
being issued.

[New.]

Fees to be
paid to
Sheriffs and
Sheriff-
clerks for
a limited
period.
8 and 9
Vict., c. 35,
§ 6.

87. The Director of Chancery, or his Depute or Substitute, shall enter or cause to be entered in a book to be kept for the purpose, and entitled "The Register of Crown Writs," the whole Crown writ at full length, and where any such writ is engrossed on a deed or conveyance the Director or his depute or substitute shall, in addition to the writ itself, enter or cause to be entered in the said Register of Crown Writs the leading name or names or short distinctive description of the lands comprehended in the deed or conveyance on which such writ is engrossed, or of such of those lands as the writ applies to, and the date of or of recording

Register of
Crown writs
to be kept.
10 and 11
Vict., c. 20.
21 and 22
Vict., c. 76,
§§ 6, 8.

such deed or conveyance, and, if recorded, the register in which the same is recorded: Provided always that no Crown writ entered in the Register of Crown Writs before the commencement of this Act shall be held to be invalidly entered in such register, although the whole of such writ has been so entered, anything in the "Titles to Land (*Scotland*) Act 1858" notwithstanding; and it is hereby provided that extracts from the said Register of Crown Writs, certified by the Director of Chancery or his depute or substitute, shall make faith in judgment in all cases except in case of improbation.

Crown
charters or
writs of
novodamus,
how to be
obtained.

10 and 11
Vict., c. 51,
§ 22.

88. In every case in which a Crown charter or writ of novodamus, or a Crown charter or writ containing any new or original grant, shall be sought, the person applying for the same shall, previously to lodging the note before mentioned in the office of the Presenter of Signatures, obtain the consent and approbation of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or any one of them, and of the Commissioners of the Board of Trade, under the hand of their secretary for the time being, and written evidence of such consent shall be produced along with the note to be lodged as aforesaid in the office of the Presenter of Signatures; and the charter or writ shall be revised and engrossed as in the ordinary case, but the same shall be lodged with the Queen's and Lord Treasurer's Remembrancer, and be by him transmitted for the sign manual of Her Majesty, and the signatures of the Commissioners of Her Majesty's Treasury, or any two of them, or in case such charter or writ be of lands holden of the Prince, and His Royal Highness be then of full age, for the consent and approbation of the Prince, signified under his sign manual, after which the proper seal shall, if desired, be attached to such charters or writs, and the other procedure shall be as is provided in regard to Crown writs generally.

Lodging
draft Crown
writ with
note, and
recording
note, to be
equivalent,
in competi-
tion, to pre-
senting a
signature
and record-
ing abstract.
10 and 11
Vict., c. 51,
§ 23.

89. The lodging of a draft of a proposed Crown writ, together with a short note in terms or to the effect of Schedule (S) hereto annexed, praying for a Crown writ in terms of such draft, shall, in competition of diligence and all other cases, be deemed and held to be equivalent to the presenting of a signature in Exchequer; and recording a copy of such note, and an abstract of such draft writ, in the Register of Abbreviates of Adjudications, shall be deemed and held to be equivalent to recording in the said register an abstract of such signature.

Crown writs
to be in the
English
language.
10 and 11
Vict., c. 51,
§ 25.

90. All Crown writs and instruments following thereon, or relating thereto, shall be expressed in the *English* Language.

91. The Court of Session performing the duty of the Court of

Exchequer as aforesaid shall be and they are hereby authorised from time to time to frame and enact by rule of Court all such regulations as shall seem to them proper for giving effect to the purposes of the present Act so far as they have reference to entries with the Crown; and the said Court shall forthwith frame and enact a rule of Court fixing and determining the fees to be paid on the various Crown writs, steps of procedure, and other matters hereby authorised with reference to such entries, but such rule of Court shall be subject to revision by the Court at any time or times thereafter.

Court of Session to frame regulations.

10 and 11 Vict., c. 51, § 28.

92. Whenever any vacancy shall occur in the office of Presenter of Signatures, it shall be lawful to the Commissioners of Her Majesty's Treasury, or any three or more of them, to regulate the salary of the Presenter of Signatures as the then circumstances of the office may require.

Salary to be regulated by Commissioners of the Treasury, when vacancy.

93. Notwithstanding anything in this Act contained, it shall be lawful for the Prince, being of full age, at any time or times hereafter to appoint his own Presenter of Signatures, and other officer or officers of Exchequer and Chancery, to discharge, in regard to all charters and precepts or writs of lands holden of him, the duties hereby assigned to the Presenter of Signatures and other officers of Her Majesty's Exchequer and Chancery respectively; and in case of the office of Presenter of Signatures, or any such other office in Exchequer or Chancery as aforesaid for the Prince, being conferred on the person holding the corresponding office for the Crown, such officer shall be bound to act for the Prince without additional salary; and the fees hereby authorised to be levied in respect of all charters and writs from the Prince shall in that case be paid into the consolidated fund; but if any such appointment by the Prince shall be conferred upon a different person, the person so appointed shall draw for his own use such of the said fees as shall arise from the duties performed by him in respect of such charters and writs.

10 and 11 Vict., c. 51, § 31.

Power to Prince and Steward of Scotland to appoint his own Presenter of Signatures, &c.

10 and 11 Vict., c. 51, § 34.

94. Nothing herein contained shall affect the right of any person to whom compensation shall have been awarded by way of annuity in virtue of the provisions of the thirty-second section of the Act Tenth and Eleventh *Victoria*, chapter fifty-one, to receive compensation: Provided that if any person to whom compensation shall be so awarded by way of annuity shall be afterwards appointed to any other public office, such compensation shall be accounted *pro tanto* of the salary payable to such person in respect of such other office while he shall continue to hold the same.

Compensation already awarded not to be affected.

10 and 11 Vict., c. 51, § 32.

Compensation, how to be paid.

10 and 11 Vict., c. 51, § 33.

95. The several compensations which may have been awarded under the authority of the last-recited Act shall be payable out of the monies which by the Acts of the Seventh and Tenth years of the reign of Her Majesty Queen Anne were made chargeable with the fees, salaries, and other charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in Scotland.

Substitute to be appointed to Sheriff of Chancery or Presenter of Signatures in event of absence or disability.

[New.]

96. In the event of the temporary absence or disability of the Sheriff of Chancery or of the Presenter of Signatures it shall be competent to the Lord Justice-General and President of the Court of Session to appoint a properly qualified person to act as Substitute to the Sheriff of Chancery or to the Presenter of Signatures, as the case may be, such person receiving from the Sheriff of Chancery or from the Presenter of Signatures, as the case may be, such remuneration for so acting as shall be fixed by the said Lord Justice-General and President of the Court of Session.

Subject-superior may be compelled to grant entries by confirmation.

10 and 11 Vict., c. 48, § 6.

97. Where any person is or shall be infeft in lands holden of a subject-superior upon a conveyance or deed of or relating to such lands granted by or derived from the person last entered with the superior and infeft, or granted by or derived from a person whose own title to such lands is capable of being made public by confirmation according to the existing law and practice, which conveyance or deed shall contain an obligation to infeft *a me* or *a me vel de me*, or shall contain a clause expressing the manner of holding to be *a me vel de me*, or shall imply that the manner of holding is *a me vel de me*, or upon any conveyance or deed which under this Act or any of the repealed Acts shall be equivalent to or have the effect of such a conveyance, it shall be lawful and competent for such person, upon production to the Lord Ordinary on the Bills in the Court of Session of his infeftment, whether the same shall consist of such conveyance or deed itself, with a warrant of registration thereon in his favour, recorded in the appropriate Register of Sasines, or of an instrument or instruments in his favour, applicable to such lands, following on such conveyance or deed, and recorded in the appropriate Register of Sasines, and warrants of the same, and upon showing the terms and conditions under which the said lands are holden of the superior thereof, to obtain warrant for letters of horning to charge the superior to grant in favour of such person a writ or charter of confirmation in the same way and form as is provided and in use for compelling entry by resignation: Provided always, that the charger shall at the same time pay or tender to such superior such duties or casualties as he is by law entitled to receive upon the entry of the charger, and that it shall be lawful for every such superior to show cause why he ought not to be compelled to give obedience

to such charge by presenting a note of suspension to the Court of Session in the usual manner.

98. Where such confirmation by a subject-superior of any conveyance or deed or instrument recorded as before provided shall be required, it shall be competent for the superior to confirm such conveyance or deed or instrument by a writ of confirmation to be engrossed thereon, as nearly as may be in the form given in Schedule (V), No. 1, hereto annexed, or, in the option of the person desiring confirmation, by a charter of confirmation in the form or as nearly as may be in the form given in Schedule (V), No. 2, hereto annexed; and the confirmation granted in either of these forms of Schedule (V) hereto annexed shall be to all intents and purposes as effectual as a charter of confirmation according to the law and practice prior to the first day of *October* One thousand eight hundred and fifty-eight, and the superior shall be bound so to confirm such conveyance or deed or instrument in either of the said forms in which he shall, by the person desiring confirmation, be required so to do, instead of in the form in use prior to the said date: Provided always, that the person requiring such confirmation be entitled to demand an entry by confirmation, and that he shall, if required, produce to the superior a charter or other writ showing the tenendas and reddendo of the lands contained in such conveyance or deed or instrument, and shall also at the same time pay or tender to the superior such duties or casualties as he may be entitled to demand: Provided also, that every superior shall be entitled to insert or refer in terms of this Act in the writ or charter to be granted by him to the whole clauses, burdens, and conditions contained in the former charter, in so far as they are not set forth at length or validly referred to in terms of this Act or of any of the Acts hereby repealed in the conveyance or deed or instrument confirmed.

Confirmation by subject-superior to be by writ or charter in form of Schedule (V), Nos. 1 and 2.
10 and 11
Vict., c. 48,
§ 7.
21 and 22
Vict., c. 76,
§ 7.

99. Where a new investiture from a subject-superior by resignation shall be required it shall be competent for the superior to grant, in favour of the person in right of the conveyance or deed which is the warrant for resignation, a writ of resignation, which shall be written on such conveyance or deed as nearly as may be in the form given in Schedule (V), No. 3, hereto annexed, or, in the option of the person resigning, by a charter of resignation in the form or as nearly as may be in the form given in Schedule (V), No. 4, hereto annexed; and the conveyance or deed, with such writ of resignation written thereon, or the charter of resignation in the separate form, shall be to all intents and purposes as effectual as if a charter of resignation had been granted in the usual form, according to the law and practice prior to the first day of *October* One thousand eight hundred and fifty-eight, and the superior

Investiture by resignation from subject-superior.
21 and 22
Vict., c. 76,
§ 9.

shall be bound to grant such writ of resignation or such charter of resignation, if required so to do, instead of a charter of resignation in the form in use prior to said date: Provided always, that the party requiring such writ or charter be entitled to demand an entry by resignation, and that he shall, if required, produce to the superior a charter or other writ showing the tenendas and reddendo of the lands resigned, and shall also at the same time pay or tender to the superior such duties or casualties as he may be entitled to demand; and it shall be competent to record in the appropriate Register of Sasines the conveyance or deed, with the writ of resignation engrossed thereon, and warrant of registration also written thereon, or the charter of resignation, with warrant of registration written thereon, or to expedite a notarial instrument on such charter, and to record such instrument, with warrant of registration thereon, in the appropriate Register of Sasines, and the recording of the conveyance or deed, with the writ of resignation and warrant of registration thereon, or of the charter, with warrant of registration thereon, or of the instrument, with warrant of registration thereon, shall have the same legal force and effect in all respects as if a charter of resignation had been granted, and such charter had been followed by an instrument of sasine duly expedite and recorded at the date of recording the said conveyance or deed, and writ or charter, or instrument according to the law and practice prior to the first day of October One thousand eight hundred and fifty-eight, in favour of the party on whose behalf the conveyance or deed, and writ or charter, or instrument are presented for registration: Provided always, that the recording of such conveyance, along with such writ and warrant of registration thereon, shall not have the effect of an instrument of sasine following on such conveyance or deed.

All writs and charters from subject-superior may refer tenendas and reddendo.

100. All writs and charters from a subject-superior of any denomination or nature other than writs or precepts of *clare constat* may be in forms as nearly approaching as may be, and as the nature of the writ or charter will admit, to the examples given in the said Schedule (V), the necessary alterations being made as the denomination or nature of the particular charter or writ may require; and such writs and charters, when granted in these forms, or as nearly as may be in these forms, shall have the same force and legal effect in all respects as if the same had been granted in any corresponding forms heretofore in use or competent, and shall be read and construed as largely and beneficially in all respects for the holders thereof as if the same had been expressed in and had contained the whole terms and words which are now used, or which were used in granting such writs or charters prior to the passing of the statutes repealed by this Act; and in granting all writs and charters by subject-superiors it shall be competent and

sufficient to refer to the tenendas and reddendo of the lands therein contained, as set forth at length either in the writ or charter produced to the superior in terms of this Act, or in any charter or other writ recorded in any public register; and subject-superiors shall be bound, if required, to grant such writs and charters containing such reference, in like manner as they were bound to grant similar charters according to the forms in use prior to the first day of *October* One thousand eight hundred and fifty-eight: Provided that when the lands to which the deed or conveyance on which any writ shall be engrossed are held under a deed of entail, or under any real burdens or conditions or provisions or limitations whatsoever appointed to be fully inserted in the investitures of such lands, it shall not be necessary in such writ to insert or refer to the destination of heirs, or the conditions, provisions, and prohibitory, irritant and resolute clauses or clause authorising registration in the Register of *Taillies* contained in such deed of entail, provided the same are inserted at full length in such deed or conveyance, or are referred to therein in manner provided by the ninth section of this Act, or to insert or refer to such real burdens or conditions or provisions or limitations, provided the same are inserted at full length in such deed or conveyance, or are referred to therein in manner provided by the tenth section of this Act.

101. Precepts of *clare constat* may be in or as nearly as may be in the form given in Schedule (W), No. 2, hereto annexed, and in all cases in which it is or may be competent to grant precepts of *clare constat*, or precepts of *clare constat* and charters of confirmation combined, it shall be competent and sufficient to grant a writ of *clare constat* in or as nearly as may be in the form given in Schedule (W), No. 1, hereto annexed, and to record such writ of *clare constat*, with a warrant of registration thereon, in the appropriate Register of Sasines; and it shall also be competent so to record any precept of *clare constat*, or precept of *clare constat* and charter of confirmation combined, with warrant of registration thereon, and such writ of *clare constat*, or precept of *clare constat*, or precept of *clare constat* with charter of confirmation combined, being so recorded, shall have the same legal force and effect in all respects as if a precept of *clare constat*, or precept of *clare constat* with charter of confirmation combined, as the case may be, had been granted, and an instrument of sasine thereon had been expedited in favour of the person on whose behalf such writ or precept of *clare constat*, or precept of *clare constat* and charter of confirmation combined, as the case may be, and warrant of registration are presented for registration, and recorded at the date of recording the said writ, or precept, or precept and charter combined, and warrant, according to the law and practice in force prior to the

Precepts and writs of *clare constat* from subject-superior.

21 and 22 Vict., c. 76, § 11.

first day of *October* One thousand eight hundred and fifty-eight; and subject-superiors shall be bound to grant such writs of *clare constat* if required by the heir entitled to demand the same: Provided always that the heir shall, if required, produce a charter or other writ showing the tenendas and reddendo of the lands in which his ancestor died infeft, and shall also at the same time pay or tender to the superior such duties or casualties as he may be entitled to demand.

Heir in bur-
gage sub-
jects may
make up
title by writ
of *clare con-
stat*.

23 and 24
Vict., c. 143,
§ 7.

102. It shall be competent for the heir of any person who died last vest and seised in any lands held burgage to obtain from the magistrates of the burgh within which said lands are situated a writ of *clare constat* in or as nearly as may be in the form given in Schedule (W), No. 3, to this Act annexed; and such writ of *clare constat* may be signed by the provost or acting chief magistrate for the time, and by the town-clerk, or, where there are more than one town-clerk, by one of the town-clerks, and when so signed shall be as valid as if signed by the whole of the magistrates; and such writ of *clare constat* may, with warrant of registration thereon in favour of such heir, be recorded in the appropriate Register of Sasines, and when so recorded, shall have the same effect in all respects as if at the date of such recording cognition and entry of such heir had taken place in due form, and an instrument of cognition and sasine in regard to such lands and in favour of such heir had been expedite and recorded according to the law and practice in force prior to the first day of *October* One thousand eight hundred and sixty.

Writs of
clare constat
from sub-
ject-supe-
riors, &c.,
not to fall
by death of
the granter.

10 and 11
Vict., c. 48,
§ 15.

103. All writs and precepts of *clare constat*, whether from subject-superiors, or from magistrates of a burgh, already made and granted, and still subsisting and in force, and all such writs and precepts of *clare constat* to be made and granted hereafter, shall, notwithstanding the death of the granter thereof, remain in full force and effect during the whole lifetime of the grantee, and shall continue effectual as a warrant for giving infeftment to the grantee personally by sasine in terms thereof, or by recording the same, with warrant of registration thereon in his favour, at any time during the grantee's life.

Where
subject-su-
prior's title
incomplete,
owner may
in certain
cases apply
to Lord Or-
dinary on
the Bills to
ordain su-

104. Where the person having right to the superiority of any lands, which superiority is not defeasible at the will of the vassal or disponent, shall not have completed his feudal title thereto so as to enable him to enter any heir or disponent of the vassal last publicly infeft in the said lands, or any adjudger or other party deriving right from or through such vassal, where such heir, disponent, adjudger, or other party, if such person had been infeft in the superiority, would have been entitled to compel entry in

virtue of this Act, or of an Act passed in the twentieth year of the reign of His Majesty King *George* the Second, or otherwise, it shall be competent to such heir, disponee, adjudger, or other party, provided the annual reddendo attached to such superiority shall not exceed five pounds sterling in value or amount, to present a petition to the Lord Ordinary on the Bills, in the form or as nearly as may be in the form No. 1 of Schedule (X) hereto annexed, praying for warrant of service on such person, and for decree in the terms set forth in such petition, and the Lord Ordinary on the Bills shall pronounce an order for service of such petition in terms or as nearly as may be in terms of the interdictor No. 2 of Schedule (X) hereto annexed; and if after such service, and the expiration of the days of intimation, such person shall not comply with the demand of the petition by completing his title and granting entry to the petitioner as aforesaid, or shall not show reasonable cause to the Lord Ordinary why he delays or refuses so to do, he shall, for himself and his heirs, whether of line, conquest, taillie, or provision, forfeit and amit all right to the said superiority, and the Lord Ordinary shall pronounce decree or judgment accordingly to the effect of entitling the petitioner, and his heirs and successors in the said lands, in all time thereafter to hold the same as vassals immediately of and under the next over-superior by the tenure and for the reddendo by and for which the forfeited superiority was held, all in the form or as nearly as may be in the form No. 3 of Schedule (X) hereto annexed; and such decree or judgment, and any similar decree or judgment which may have been pronounced under any of the Acts of Parliament hereby repealed, when extracted and recorded in the Register of Sasines appropriate to the lands, shall be held absolutely to extinguish such right of superiority, and shall enable the petitioner to apply to such over-superior, as his immediate superior, for an entry accordingly; and it is hereby provided that in the renewed investiture to be so obtained by the petitioner under the authority of the said decree or judgment, the tenendas and reddendo contained in the title-deeds of the forfeited superiority shall be inserted in room of those contained in the investiture of the petitioner's predecessor or author, and the lands shall be held by the petitioner and his successors according to the tenure of the forfeited superiority in all time thereafter; and the writ in the petitioner's favour shall be expressed as nearly as may be in one or other of the forms given in Schedule (AA) hereto annexed.

perior to complete his title and grant an entry under pain of forfeiture.

10 and 11 Vict., c. 48, § 8.

105. If in the case aforesaid the annual reddendo shall exceed in value or amount the sum of five pounds sterling, or, in the option of the said heir, disponee, adjudger, or other party, whether the said annual reddendo shall exceed the said sum of five pounds

Owner may in such case apply to Lord Ordinary on Bills to au-

thorise application for an entry by the Crown or mediate over-superior as in vice of the recusant superior.

10 and 11
Vict., c. 48,
§ 9.

sterling or not, it shall be lawful for such heir, disponent, adjudger, or other party to present a petition to the Lord Ordinary on the Bills, in the form or as nearly as may be in the form of No. 1 of Schedule (Y) hereto annexed, praying for warrant and decree as there set forth, and the Lord Ordinary shall pronounce an order for service, in the terms or as nearly as may be in the terms of the interlocutor given in No. 2 of Schedule (Y) hereto annexed; and if after such service and expiration of the days mentioned in such order of service, such person shall not comply with the demand of the petition by completing his title and granting entry to such petitioner as aforesaid, or shall not show reasonable cause to the Lord Ordinary why he delays or refuses so to do, he shall, for himself and his heirs, whether of line, conquest, tailie or provision, forfeit and amit all right to the dues and casualties payable on the entry of such petitioner, who shall also be entitled to retain his feu-duties or other annual prestations until fully paid and indemnified for all the expenses of the petition and procedure thereon, and all the expenses of completing his title in terms of this Act; and the Lord Ordinary shall pronounce interim decree to that effect, and grant interim warrant for such petitioner applying for and obtaining an entry from the Crown, or, in the option of the petitioner, from the mediate over-superior as acting in the vice of such superior, all in the form or as nearly as may be in the form of No. 3 of Schedule (Y) hereto annexed; and any petitioner who shall obtain such decree under this Act, or who shall have obtained a similar decree under a petition presented in virtue of any of the Acts of Parliament hereby repealed, shall be entitled forthwith to lodge, along with an extract of the said decree, in the office of the Presenter of Signatures, a draft of a proposed writ from the Crown, as in vice of such superior, with a short note in terms of this Act; and such writ, for which the said extract decree shall be a sufficient warrant, may be in or as nearly as may be in one or other of the forms given in Schedule (Z) hereunto annexed, and shall be as effectual as if granted by the mediate superior of the feu duly infeft in the superiority; and, when there is a mediate over-superior duly infeft, such extract decree shall, in the option of the petitioner, be directed against such mediate over-superior, and shall be a sufficient warrant for letters of horning to charge such mediate over-superior to enter the petitioner by granting a valid writ as in vice of such superior; and after completion of his title, the petitioner shall be entitled, if he thinks fit, to lodge, as part of the proceedings under his petition, an account of the expenses of that process, and of completing his title, and the Lord Ordinary shall, if required on the part of such petitioner, modify the amount thereof, and decern for retention as aforesaid, in the form of No. 4 of Schedule (Y) hereto annexed.

106. The lands and others contained in such writ to be so obtained shall be holden of the Crown, or the mediate over-superior, as in the vice of the unentered immediate superior, while and so long as he and his successors, the immediate superiors thereof, shall remain unentered, and thereafter until a new entry in favour of the vassal or his successors shall become requisite.

Lands to be held temporarily of the Crown or mediate superior.

10 and 11 Vict., c. 48, § 10.

107. When a petition shall be presented as aforesaid praying for warrant of service and for decree against any person so having a right to the superiority of any lands, and not having completed his feudal title thereto, whether the annual reddendo shall be above or below the value or amount of five pounds sterling, it shall be competent for him, at any time before expiration of the days of intimation, or before interim decree shall have been extracted as aforesaid, to lodge, as part of the proceedings under such petition, a minute, signed by himself or by his mandatory or agent duly authorised by him in writing, stating that he tenders relinquishment of the right of superiority which he holds on apparency in favour of the petitioner and his heirs and successors, and such minute shall be in the form or as nearly as may be in the form No. 1 of Schedule (BB) hereto annexed; and if the petitioner shall, by himself or his counsel or agent, subscribe or endorse upon such minute an acceptance of the same in the form or as nearly as may be in the form No. 2 of Schedule (BB) hereto annexed, the Lord Ordinary is hereby authorised and required, on the petitioner's motion, to interpose his authority to such minute and acceptance, and to decern and declare the right of superiority thus relinquished to be extinguished, to the effect of making the petitioner and his successors in the said lands hold the lands as vassals immediately of and under the superior of the relinquished superiority in permanency and by the tenure and for the reddendo by and for which such relinquished superiority was held, the decree so to be pronounced to be in the form or as nearly as may be in the form No. 3 of Schedule (BB) hereto annexed; and the said decree, when extracted and recorded in the appropriate Register of Sasines, shall entitle the petitioner and his forebears to apply for an entry to such superior accordingly as his immediate superior; and in the renewed investiture to be obtained by the petitioner, under the authority of the said decree, the tenendas and reddendo contained in the title deeds of the relinquished superiority shall be inserted in room of those contained in the investiture of the petitioner's predecessor or author, and the lands shall be held by himself and his successors, according to the tenure of the relinquished superiority, in all time thereafter; and the writ in the petitioner's favour may be expressed in one or other of the forms given in Schedule (AA) hereto annexed; but nothing herein contained shall be held as rendering it imperative

The party in right of the superiority may lodge a minute tendering relinquishment of his right, and if accepted by the petitioner the Lord Ordinary may interpose his authority.

10 and 11 Vict., c. 48, § 11.

on the petitioner to accept of the offered relinquishment, and to take the place of his immediate superior, it being hereby provided that if he prefers it he shall be entitled to refuse the same, and to complete his title by entry from the Crown, or the mediate over-superior, as in the vice of his immediate superior.

Over-superior's rights not to be extended or affected.

10 and 11
Vict., c. 48,
§ 12.

108. The investiture thus completed upon the forfeiture of such heir-apparent, or upon the relinquishment of the superiority by such heir-apparent, and acceptance by the petitioner, shall in all respects, and to all intents and purposes, be as effectual as if such apparent heir had completed his titles to the superiority and thereafter conveyed the same to the petitioner, and the latter, after completing his titles under the over-superior, had resigned *ad remanentiam* in his own hands: Provided always, that the title so completed shall not in any respect extend the interests of such over-superior, and that he shall be entitled to no more than the casualties, whether taxed or untaxed, to which he would have been entitled if such apparent heir had remained his vassal.

Vassal obtaining or accepting forfeiture or relinquishment of superiority to be liable for its value, but forfeiture or relinquishment not to infer representation.

10 and 11
Vict., c. 48,
§ 13.

109. In the case of such forfeiture or relinquishment of superiority by any apparent heir in manner above mentioned, the vassal obtaining or accepting the same, and making up titles under the over-superior, shall be liable, but subject always to retention of expenses as aforesaid, for the value of the said superiority to the said heir-apparent, or any person in his right, or having interest, as accords of law; and such forfeiture or relinquishment by such heir-apparent shall not infer a passive representation on his part, nor any liability for the debts of the person last infest therein, beyond the price, if any, which he may receive for such forfeiture or relinquishment; and the vassal, if he accepts thereof, shall not be accountable in any case for more than the value or price of the forfeited or relinquished right.

Mode of relinquishing superiorities.

21 and 22
Vict., c. 76,
§ 23.

110. In order to facilitate still further the extinguishing of mid-superiorities not defeasible by the vassal, it shall be competent to any subject-superior, whether himself entered with his superior or not, and whatever the annual value of the reddendo may be, to relinquish his right of superiority in favour of his immediate vassal, by granting a deed of relinquishment in the form or as nearly as may be in the form of No. 1 of Schedule (CC) hereto annexed; and on the deed of relinquishment being accepted by the vassal, by an acceptance written on such deed in the form or as nearly as may be in the form No. 2 of Schedule (CC) hereto annexed, and being followed by a writ of investiture by the over-superior as hereinafter provided, also written upon the deed of relinquishment, and on such deed, with the acceptance and writ of investiture written thereon, whether dated prior or sub-

sequent to the commencement of this Act, and warrant of registration on behalf of the vassal, also written thereon, being thereafter recorded in the appropriate Register of Sasines, the superiority so relinquished shall be held to be extinguished, and the vassal and his successors in the lands shall hold the same as immediate vassals of the over-superior by the tenure and for the reddendo by and for which such relinquished superiority was held, and the vassal and his foresaids shall be entitled to apply for an entry to such over-superior accordingly as his immediate superior; and such relinquishment by a superior who shall not have completed his title to the superiority relinquished shall not infer a passive representation on his part, nor any liability for the debts of the person last infeft therein, beyond the price or consideration, if any, which he may receive for such relinquishment.

111. On the application of the vassal in the relinquished superiority, and on production by him of the deed of relinquishment and acceptance thereof, whether dated prior or subsequent to the commencement of this Act, and on his paying or tendering such duties and casualties as may be exigible by the over-superior, the over-superior shall be bound to receive the vassal as his immediate vassal by writ of investiture in or as nearly as may be in the form of No. 3 of Schedule (CC), to be written on the deed of relinquishment, and the tenendas and reddendo contained in the title-deeds of the relinquished superiority shall be inserted therein in room of those contained in the former investiture held under the relinquished superiority; and where the lands are held of the Crown, such writ of investiture shall be obtained from Chancery, in the same manner as is hereinbefore directed in regard to confirmations written on the deeds confirmed: Provided always that the party applying for such writ of investiture shall lodge or cause to be lodged in the office of the Presenter of Signatures a draft of the proposed writ, in the same manner as when a Crown writ is applied for under the provisions of this Act; and the deed of relinquishment with the acceptance thereon shall be officially transmitted to the Director of Chancery, and the Crown writ of investiture engrossed thereon, and recorded in the same manner in which Crown writs are to be recorded, and shall thereafter be delivered to the vassal or his agent on payment of the same fees as are now payable for recording a writ or charter in Chancery; and the investiture completed upon such relinquishment of the superiority shall be as effectual as if the granter of the deed of relinquishment had completed his title to the superiority, and had thereafter conveyed the same to the vassal, and the latter, after having completed his titles under the over-superior, had resigned *ad remanentiam* in his own hands: Provided always that the investiture so completed shall not in any respect extend the rights

Investiture
by over-superior.

21 and 22
Vict., c. 76,
§ 24.

or interests of such over-superior, and that he shall be entitled to no more than the duties and casualties, taxed or untaxed, to which he would have been entitled if the granter of the deed of relinquishment had remained or entered as his vassal.

Applications
of price of
entailed su-
periorities.

21 and 22
Vict., c. 76,
§ 25.

112. Where the right of superiority, or the dues and casualties payable in respect thereof, forfeited or relinquished under the provisions of this Act, shall form part of an estate held under a deed of strict entail, such forfeiture or relinquishment shall not operate as a contravention of such entail, anything contained in the deed of entail or any Act of Parliament notwithstanding; and the price agreed to be paid for such superiority so forfeited or relinquished, if any, shall be consigned by the vassal in one of the chartered Banks in *Scotland*, subject to the orders of the Court of Session, and shall be applicable and applied in such and the like manner and to such and the like purposes as purchase money or compensation coming to parties having limited interests is made applicable under the Lands Clauses Consolidation (*Scotland*) Act 1845, or any Act altering or amending the same, or under the Act of the Eleventh and Twelfth *Victoria*, chapter thirty-six, intituled *An Act for the Amendment of the Law of Entail in Scotland*, or under an Act of the Sixteenth and Seventeenth *Victoria*, chapter ninety-four, intituled *An Act to extend the Benefits of the Act of the Eleventh and Twelfth Years of Her present Majesty for the Amendment of the Law of Entail in Scotland*; and for that purpose it shall be competent to the heir of entail in possession to present a summary petition to the Court of Session, praying to have the price so applied, and such petition shall set forth the names, designations, and places of abode of those heirs of entail whose consents would be required to the execution of an instrument of disentail; and on such petition being served on such parties, and being intimated in the minute book and on the walls in common form, it shall be competent for the Court to direct the price to be applied to such of the said purposes as may appear to them to be most expedient: Provided always that where the sums agreed to be paid for all the superiorities which form part of an entailed estate shall not in all exceed the sum of Two hundred pounds, such sum shall belong to the heir in possession, and the Court shall direct such sums to be paid to him: Provided also that the price of such superiorities may be applied by the heir in possession to such purposes and in such manner as may be authorised by any private Act of Parliament authorising the sale of the entailed estate or any portion thereof, and the application of the price thereof; and where the lands of which the superiority is so forfeited or relinquished shall be held by the vassal under a deed of strict entail, the vassal in such lands shall be entitled and he is hereby authorised to grant a bond and disposition in security over the entailed estate for the

Price of su-
periorities of
entailed
lands may
be charged
on the en-
tailed estate.

21 and 22
Vict., c. 76,
§ 26.

full amount of the price paid for the forfeited or relinquished superiority, together with all expenses incurred in the relative proceedings, including the estimated expense of such bond and disposition in security; and his granting such bond and disposition in security shall not operate as a contravention of such entail, anything contained in the deed of entail or any Act of Parliament notwithstanding: Provided always that such bond and disposition in security shall be granted with the consent of those heirs of entail whose consents would be required to the execution of an instrument of disentail of the lands, or under the authority of a judicial warrant or decree of the Court of Session pronounced on a summary petition by the heir of entail in possession praying for such warrant; and the proceedings under such petition shall be the same or as nearly as may be the same as the proceedings under a petition to charge an entailed estate with provisions to younger children, as authorised by the said Acts of the Eleventh and Twelfth *Victoria*, chapter thirty-six, and Sixteenth and Seventeenth *Victoria*, chapter ninety-four: Provided always that it shall not be necessary that such petition be publicly advertised in the *Gazette* or any newspaper, but that service and intimation only shall be made in common form.

113. Where no agreement shall have been made or shall be made with the superior of lands of the nature referred to in the twenty-sixth section of this Act for a periodical or other payment in lieu of the casualty or composition payable by law, or in terms of the investiture upon the entry of heirs and singular successors, or where the casualty and composition shall not have been taxed, and where by law and under the terms of the investiture composition as on the entry of a singular successor would be or but for the provisions of the said section would have been payable upon the entry of any party or parties as successors to the party or parties in whose name the titles shall have been expedited and recorded as provided by the said section, it shall be lawful for such superior, at the death of the existing vassal in such lands, and at the expiration of every period of twenty-five years thereafter, so long as such lands shall belong to or be held for behoof of such congregation or society or body of men, to demand and take from such congregation or society or body of men or other party or parties to whom such lands may have been or shall be feued or conveyed, or by whom the same may be held for their behoof, a sum corresponding to the casualty or composition, if any such shall in the circumstances be due, which would have been payable upon the entry of a singular successor therein; and such payments shall be in full of all casualties of entry and composition payable to the superior for or furth of such lands, while the same shall remain the property or be held for behoof of such congregation or society

Providing for payment in lieu of casualties of superiority in case of lands conveyed for religious purposes.
13 Vict., c. 13, § 2.

or body of men, and the superior shall have all such and the like preference and execution for the recovery of such sums as superiors have for the recovery of casualties of superiority according to law: Provided always, that where such casualty or composition shall not have been taxed in the investiture, and the lands so feued or conveyed shall not be situated in a town or village, or in the immediate vicinity thereof, the casualty or composition payable therefor shall be held to be the annual rent or annual value of the lands so feued or conveyed, if let as an agricultural subject at the time when such casualty or composition shall become due and exigible in virtue of this Act.

Writs of confirmation, &c., by subject-superiors to be tested.
23 and 24
Vict., c. 143,
§ 40.

114. Writs of confirmation, and writs of resignation, and writs of *clare constat*, and all other writs or charters granted in terms of this Act by subject-superiors, shall be authenticated in the form required by the law of *Scotland* in the case of ordinary conveyances.

Charters and writs to operate as confirmation of all prior conveyances, &c.
23 and 24
Vict., c. 143,
§ 39.

115. Every charter and writ whether from the Crown or from a subject-superior of whatever description shall operate a confirmation of the whole prior deeds and conveyances necessary to be confirmed in order to complete the investiture of the person obtaining such writ or charter.

Stamp-duty on writs of confirmation, &c.
23 and 24
Vict., c. 143,
§ 41.

116. The stamp-duty chargeable on writs of confirmation, writs of resignation, writs of *clare constat*, and writs of investiture, granted or to be granted in virtue of this Act, except Crown writs, and on writs of acknowledgment under "The Registration of Leases (*Scotland*) Act," shall be the same as that chargeable on charters of confirmation, charters of resignation, and precepts of *clare constat* by subject-superiors, and the said duty may be paid by means of adhesive stamps to be provided for that purpose by the Commissioners of Inland Revenue, who may from time to time make such rules as may seem fit for regulating the use of such stamps, and for insuring the proper cancellation thereof.

Heritable securities to form moveable estate;
[*New.*]

117. From and after the commencement of this Act no heritable security granted or obtained either before or after that date shall, in whatever terms the same may be conceived, except in the cases hereinafter provided, be heritable as regards the succession of the creditor in such security, and the same, except as hereinafter provided, shall be moveable as regards the succession of such creditor, and shall belong after the death of such creditor to his executors or representatives *in mobilibus*, in the same manner and to the same extent and effect as such security would, under the law and practice now in force, have belonged to the heirs of such creditor: Provided always, that where any heritable

security is or shall be conceived expressly in favour of such creditor, and his heirs or assignees or successors, excluding executors, the same shall be heritable as regards the succession of such creditor, and shall after the death of such creditor belong to his heirs in the same manner and to the same extent and effect as is the case under the existing law and practice in regard to heritable securities: And provided also, that where a creditor in any existing or future security recorded, or on which an instrument has followed recorded in the Register of Sasines, shall desire to exclude executors, it shall be competent for him to do so by executing a minute in the form or as nearly as may be in the form of Schedule (DD) hereto annexed, and recording the same in the appropriate Register of Sasines, and upon such minute being recorded the security to which it refers shall be heritable in the manner and to the extent and effect hereinbefore provided; and further, provided that where in any existing or future security which has not been recorded, or followed by an instrument recorded in the Register of Sasines, or where in the case of any conveyance or deed of or relating to such security not recorded in the Register of Sasines, the creditor shall desire to exclude executors, it shall be competent for him to do so by indorsing a minute in the form or as nearly as may be in the form of Schedule (DD) hereto annexed, on the security or on the deed or conveyance thereof in his favour which has not been recorded as aforesaid, and recording the same, along with such security or with such deed or conveyance as the case may be, in the appropriate Register of Sasines, and upon such security or deed or conveyance, as the case may be, and minute being so recorded the security shall be heritable in the manner and to the extent and effect hereinbefore provided; and, where executors shall be excluded in the security, or by minute recorded as aforesaid, the security shall continue to be heritable as regards the succession of the creditor for the time holding such heritable security, until the exclusion of executors shall be removed, which it shall be lawful for such creditor to do either by executing a minute in the form or as nearly as may be in the form of Schedule (EE) hereto annexed, and recording the same in the appropriate Register of Sasines, whereupon the security shall become moveable as regards the succession of such creditor, as provided by this Act, or by assigning, conveying, or bequeathing such security to himself or to any other person, without expressing or repeating such exclusion, and upon such assignation, conveyance, or bequest taking effect, the security shall become moveable as regards the succession of such creditor or other person as the case may be, as provided by this Act: And further, provided that all heritable securities shall continue, and shall be heritable *quoad fiscum*, and as regards all rights of courtesy and terce competent to the husband or wife of

except where conceived in favour of heirs, excluding executors,

and *quoad fiscum*.

Not to belong to husband *jure mariti*, nor to wife *jure relictæ*.

any such creditor, and that no heritable security, whether granted before or after marriage, shall to any extent pertain to the husband *jure mariti*, where the same is or shall be conceived in favour of the wife, or to the wife *jure relictæ*, where the same is or shall be conceived in favour of the husband, unless the husband or relict has or shall have right and interest therein otherwise; declaring, nevertheless, that this provision shall in no way prejudice the rights and interests of wife or husband, or of the creditors of either, in or to the bygone interest and annualrents due under any such heritable security and *in bonis* of the husband or wife respectively prior to his or her death; and further provided, that where legitim is claimed on the death of the creditor no heritable security shall to any extent be held to be part of the creditor's moveable estate in computing the amount of the legitim.

Nor to be computed in legitim.

Bonds and dispositions in security may be granted in the form No. 1 of Schedule (FF).

10 and 11 Vict., c. 50, § 1.

118. From and after the commencement of this Act it shall be lawful and competent for any person entitled to grant an heritable security by way of bond and disposition in security to grant the same in the form or as nearly as may be in the form No. 1 of Schedule (FF) hereto annexed; and the registration of such bond and disposition in security, or of any bond and disposition in security granted according to any of the forms competent or in use prior to the commencement of this Act, shall be as effectual and operative to all intents and purposes as if such bond and disposition in security had contained, in the case of lands not held by burgage tenure, an obligation to infest *a me vel de me*, procuratory of resignation, and precept of sasine, and in the case of lands held by burgage tenure an obligation to infest *more burgi*, and a procuratory of resignation, all in the words and form in use prior to the thirtieth day of September One thousand eight hundred and forty-seven, and as if sasine or resignation and sasine, as the case may be, had been duly made, accepted, and given thereon in favour of the original creditor, and an instrument of sasine or of resignation and sasine, as the case may be, in favour of such creditor had been duly recorded in the appropriate Register of Sasines of the date of the registration of the said bond and disposition in security as aforesaid.

Explanation of clauses in Schedule (FF), No. 1.

10 and 11 Vict., c. 50, § 2.

119. The import of the clauses of the form of No. 1 of the said Schedule (FF) occurring in any bond and disposition in security, whether granted before or after the commencement of this Act, shall be as follows; *videlicet*, the clause obliging the grantor to pay the amount due under the bond, principal, interest and penalty, to the creditor, his heirs, executors, or assignees, shall, unless where executors are excluded, be held to import an obligation to pay the same to the creditor and his representatives *in mobilibus* and his assignees, and, where there is or shall be such

exclusion, to the creditor and his heirs and assignees; the clause disposing the lands to such creditor and his foresaids heritably shall, unless where executors are excluded, be held to import a disposition of such lands to such creditor and his representatives *in mobilibus* and his assignees, and, where there is or shall be no such exclusion, to such creditor and his heirs and assignees, in security, in manner specified in the bond and disposition in security, with all the rights and powers at present competent to a creditor and his heirs under such a security; the clause of assignation of rents shall be held to import an assignation to the creditor and his representatives *in mobilibus* or his heirs as the case may be, and to his assignees, to the rents to become due or payable from and after the date from which interest on the sum in the security commences to run, in the fuller form generally in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven, including therein a power to the creditor and his foresaids on default in payment to enter into possession of the lands disposed in security and uplift the rents thereof, or to uplift the rents thereof if the lands are not disposed in security, and to insure all buildings against loss by fire, and to make all necessary repairs on the buildings, subject to accounting to the debtor for any balance of rents actually recovered beyond what is necessary for payment to such creditor and his foresaids of the sums, principal, interest, and penalty due to him or them under such security, and of all expenses incurred by him or them in reference to such possession, including the expenses of management, insurance, and repairs; and the clause of assignation of writs shall be held to import an assignation to the creditor and his foresaids to writs and evidents to the same effect as in the fuller form generally in use in a bond and disposition in security with power of sale prior to the thirtieth day of *September* One thousand eight hundred and forty-seven; and the clause of warrandice shall be held to import absolute warrandice as regards the lands and the title-deeds thereof, and warrandice from fact and deed as regards the rents; and the clause consenting to registration for preservation and execution shall have the meaning and effect assigned to such clause in the one hundred and thirty-eighth section of this Act; the clauses reserving right of redemption, and obliging the grantor to pay the expenses of assigning or discharging the security, and, on default in payment, granting power of sale, shall have the same import, and shall be in all respects as valid, effectual, and operative, as if it had been in such bond and disposition in security specially provided and declared that the lands and others thereby disposed should be redeemable by the grantor from the grantee, at the term and place of payment, or at any term of *Whitsunday* or *Martinmas* thereafter, upon premonition of three months, to be made by the grantor to

Clauses reserving right of redemption, and of obligation to pay expense of assignation or discharge and power of sale, valid, &c.

the grantee, personally or at his dwelling place, if within *Scotland*, and if furth thereof at the time, then at the office of the Keeper of the Record of Edictal Citations within the General Register House, *Edinburgh*, in presence of a notary-public and witnesses, and that by payment to him of the whole principal sum payable under the bond and disposition in security, interest due thereon, and liquidated expenses and termly failures corresponding thereto, if incurred, and, in case of his absence or refusal to receive the same, by consignment thereof in the bank specified in the security, if any bank shall be so specified, and if not, then in one or other of the banks in *Scotland* incorporated by Act of Parliament or Royal Charter, having an office or branch at the place of payment, to be made furthcoming on the peril of the consigner, the place of redemption to be within the office of such bank or branch thereof; and as if it had been thereby further provided and declared that any discharge and renunciation, disposition and assignation, or other deed necessary to be granted by the grantee upon the grantor making payment and redeeming as aforesaid, and also the recording thereof, should always be at the expense of the grantor; and as if it had been thereby further provided and declared that if the grantor should fail to make payment of the sums that should be due by the personal obligation contained in the said bond and disposition in security, within three months after a demand of payment intimated to the grantor, whether of full age or in pupilarity or minority, or although subject to any legal incapacity, personally or at his dwelling place if within *Scotland*, or if furth thereof at the office of the Keeper of the Record of Edictal Citations above mentioned, in presence of a notary-public and witnesses, and which demand for payment may be in or as nearly as may be in the form of No. 2 of Schedule (FF) hereto annexed, and a copy thereof certified by such notary-public in the form of No. 3 of Schedule (FF) hereto annexed, shall be sufficient evidence of such demand, then and in that case it should be lawful to and in the power of the grantee, immediately after the expiration of the said three months, and without any other intimation or process at law, to sell and dispose, in whole or in lots, of the said lands and others, by public roup at *Edinburgh* or *Glasgow*, or at the head burgh of the county within which the said lands and others, or the chief part thereof, are situated, or at the burgh or town sending or contributing to send a member to Parliament which, whether within or without the county, shall be nearest to such lands, or the chief part thereof, on previous advertisement stating the time and place of sale, and published once weekly for at least six weeks subsequent to the expiry of the said three months, in any newspaper published in *Edinburgh*, or in *Glasgow*, and also in every case in a newspaper published in the county in which such lands are situated,

or if there be no newspaper published in such county, then in any newspaper published in the next or a neighbouring county, and a certificate by the publishers of such newspapers for the time shall be *prima facie* evidence of such advertisement, the grantee being always bound, upon payment of the price, to hold count and reckoning with the grantor for the same, after deduction of the principal sum secured, interest due thereon, and liquidated penalties corresponding to both which may be incurred, and all expenses attending the sale, and for that end to enter into articles of roup, to grant dispositions containing all usual and necessary clauses, and in particular a clause binding the grantor of the said bond and disposition in security, in absolute warrandice of such dispositions, and obliging him to corroborate and confirm the same, and to grant all other deeds and securities requisite and necessary by the laws of *Scotland* for rendering such sale or sales effectual, in the same manner and as amply in every respect as the grantor could do himself; and as if it had been thereby further provided and declared that the said proceedings should all be valid and effectual, whether the debtor in the said bond and disposition in security for the time should be of full age, or in pupilarity or minority, or although he should be subject to any legal incapacity, and that such sale or sales should be equally good to the purchaser or purchasers as if the grantor himself had made them, and also that in carrying such sale or sales into execution it should be lawful to the grantee to prorogate and adjourn the day of sale from time to time as he should think proper, previous advertisement of such adjourned day of sale being given in the newspapers above mentioned, once weekly for at least three weeks; and as if the grantor had bound and obliged himself to ratify, approve of, and confirm any sale or sales that should be made in consequence thereof, and to grant absolute and irredeemable dispositions of the lands and others so to be sold to the purchaser, and to execute and deliver all other deeds and writings necessary for rendering their rights complete.

120. Heritable securities, whether dated before or after the commencement of this Act, may be registered in the appropriate Register of Sasines at any time during the lifetime of the grantee, and shall in competition be preferred according to the date of the registration thereof: Provided always that if an heritable security has not been so registered in the lifetime of the grantee, such heritable security shall be as full and sufficient warrant for completion of the title in favour of the party having right thereto as if it had been a bond and disposition in security, containing precept of sasine and other clauses, in the ordinary form in use prior to the thirtieth day of *September* One thousand eight hundred and forty-seven, which title may be completed as after provided, or

Securities may be registered during life-time of grantee, or title completed after his death.
10 and 11
Vict., c. 50,
§ 6.

by service or notarial instrument as the circumstances of the case may require.

Sale carried through in terms of this Act to be valid to the purchaser.

10 and 11 Vict., c. 50, § 7.

121. Any sale duly carried through in terms of the heritable security and of this Act, or partly in terms of any Act now in force and partly in terms of this Act if the proceedings shall have been begun before the commencement of this Act, shall be as valid and effectual to the purchaser as if made by the grantor of the security himself, and that whether the grantor shall have died before or after such sale, and without the necessity of confirmation by him or his successors, and notwithstanding that the party debtor in the security and in right of the lands at the time shall be in pupilarity or minority, or subject to any legal incapacity: Provided always that nothing herein contained shall be held to affect or prejudice the obligation of the grantor and his successors to execute, or the right of the creditor or purchaser to require the grantor and his successors to execute, any deed or deeds which, independently of this enactment, would at common law be necessary for rendering the sale effectual, or otherwise completing in due form the titles of such purchaser.

Creditors selling to count and reckon for the surplus of the price, and to consign the same in the bank.

10 and 11 Vict., c. 50, § 8.

122. The creditor, upon receipt of the price, shall be bound to hold count and reckoning therefor with the debtor and postponed creditors, if any such there be, or with any other party having interest, and to consign the surplus which may remain, after deducting the debt secured, with the interest due thereon and penalties incurred and expenses in reference to the possession of the estate if such creditor has been in possession, including expense of insurance, repairs, and management, and whole expenses attending such sale, and after paying all previous incumbrances and the expense of discharging the same, in one or other of the said banks, or in a branch of any such bank, in the joint names of the seller and purchaser, for behoof of the party or parties having best right thereto; and the particular bank in which such consignment is to be made shall be specified in the articles of roup.

On sale and consignment of surplus, lands to be disencumbered of the security.

10 and 11 Vict., c. 50, § 9.

123. Upon a sale being carried through in terms of this Act, and upon consignment of the surplus of the price, if any be, as aforesaid, the disposition by the creditor to the purchaser shall have the effect of completely disencumbering the lands and others sold of all securities and diligences posterior to the security of such creditor, as well as of the security and diligence of such creditor himself.

Securities to be trans-

124. Where an heritable security, whether dated before or after the passing of this Act, has been constituted by infeftment,

whether such infeftment has been taken by recording the security or an instrument thereon in the appropriate Register of Sasines in terms of this Act or any of the repealed Acts, or by any mode competent or in use prior to the thirtieth day of *September* One thousand eight hundred and forty seven [in the appropriate Register of Sasines], the right of the creditor therein may be transferred, either in whole or in part, by an assignation or other conveyance in the form or as nearly as may be in the form of Schedule (GG) hereto annexed; and on such assignation or conveyance being recorded in the appropriate Register of Sasines, the said security or part of such security, as the case may be, shall be transferred to the assignee as effectually as if such security had been disposed and assigned, and the disposition and assignation or conveyance had been followed by sasine duly recorded according to the law and practice prior to the first day of *October* One thousand eight hundred and forty-five at the date of recording such assignation or conveyance; and such assignee or disponee shall thereupon be held to be as fully entered as if he had obtained a renewal of the investiture in his favour, according to the law and practice in use before that date: Provided always that where the assignation or conveyance of an heritable security constituted as aforesaid is contained in any other conveyance or deed, it shall not be necessary to record the whole of such conveyance or deed, but it shall be sufficient to expedite and record in the appropriate Register of Sasines a notarial instrument in the form or as nearly as may be in form of Schedule (HH) hereto annexed, and upon such notarial instrument being recorded the person or persons expediting the same shall be in the same position as if the assignation or conveyance of the heritable security on which it proceeds had been itself recorded as of the date of recording the said instrument.

ferred in the form prescribed.

8 and 9 Vict., c. 31, § 1.

When conveyance of heritable security is contained in a general deed of conveyance, the whole such deed need not be recorded.

125. Upon the death of any creditor in right of an heritable security, constituted by infeftment as aforesaid, from which executors shall not have been excluded, who shall die leaving a testamentary or *mortis causa* deed or writing naming executors, or disposing or bequeathing his moveable estate to disponees, or disposing or bequeathing the security to legatees, it shall be competent for the executors or disponees, duly confirmed, or for the legatees, as the case may be, to complete a title thereto by a writ of acknowledgment to be granted in their favour by the debtor in the said security infeft in the lands comprehended therein, in or as nearly as may be in the form set forth in Schedule (II) hereto annexed; and when the executors or disponees (being more than one) shall be appointed under such deed or writing for holding the moveable estate of the deceased in trust for the purposes of the deed or writing, and not wholly for their own beneficial inte-

Completion of title of executors or executor-nominate, or disponee or legatee of an heritable security, or of heir where executors excluded.

[*New.*]

8 and 9
Vict., c. 31.
§ 2.

rest, it shall be competent (when not expressly precluded by the terms of the deed or writing) to take the said writ in favour of the said executors or disponees, and the survivors or survivor of them; and where any creditor has died or shall die before the commencement of this Act in right of such an heritable security, or where any creditor shall die thereafter in right of such an heritable security from which executors shall have been excluded, it shall be competent for the heir of such creditor to complete a title to the security by a writ of acknowledgment as aforesaid; and on such writ being recorded in the appropriate Register of Sasines, the executors, disponees, or legatees, or heirs, as the case may be, in whose favour such writ has been granted, shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself.

Completion
of title of
executors,
&c., of cre-
ditor dying
intestate.

[New.]

126. Upon the death of any creditor who shall die intestate in right of an heritable security constituted by infeftment as aforesaid, from which executors shall not have been excluded, it shall be competent to the executors duly confirmed to such deceased creditor to complete a title to such security by expeding and recording an instrument under the hands of a notary-public in the form or as nearly as may be in the form set forth in Schedule (JJ) hereto annexed; and when the executors (being more than one) duly confirmed as aforesaid shall not be entitled to the deceased's moveable estate wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of the said executors and the survivors or survivor of them; and on such instrument being recorded in the appropriate Register of Sasines such executors or executor shall be held to be vested with the full right of the creditor in such security, and to be entered with the superior in the same manner and to the same effect as the original creditor himself.

Executor-
nominate or
disponnee
mortis causa
may com-
plete title
by notarial
instrument.

[New.]

127. Upon the death of any creditor in right of an heritable security constituted by infeftment as aforesaid, from which executors shall not have been excluded, and who shall die leaving a testamentary or *mortis causa* deed or writing naming executors, or disposing or bequeathing his moveable estate to disponees, or disposing or bequeathing the security to legatees, it shall be competent for the executors or disponees, duly confirmed, or for the legatees, as the case may be, to complete a title thereto by expeding and recording in the appropriate Register of Sasines an instrument under the hands of a notary-public in the form or as nearly as may be in the form of Schedule (KK) hereto annexed; and when such executors or disponees or assignees or legatees, being more than one, shall not be entitled to such security wholly

for their own beneficial interest, it shall be competent to take such notarial instrument in favour of such executors or disponees or assignees or legatees, and the survivors and survivor of them, unless such a destination be expressly excluded by the terms of the conveyance or deed or writing; and where any creditor has died or shall die before the commencement of this Act in right of such an heritable security and leaving a *mortis causa* conveyance thereof or of his heritable estate generally, or where any creditor shall die thereafter in right of such an heritable security from which executors shall have been excluded, and leaving such a *mortis causa* conveyance, or a testamentary deed or writing within the meaning of the twentieth section of this Act, it shall be competent to the grantee or legatee under such *mortis causa* conveyance or testamentary deed or writing to complete a title to the security by notarial instrument as aforesaid; and on such instrument being so recorded the executors, disponees, legatees, or grantees, as the case may be, in whose favour such instrument has been expedite shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself.

128. Where any creditor has died or shall die before the commencement of this Act in right of an heritable security constituted by infeftment as aforesaid, or where any creditor shall die thereafter in right of such an heritable security from which executors shall have been excluded, it shall be competent for the nearest and lawful heir of such creditor who, according to the present law and practice, would be entitled to succeed to such security, on obtaining a decree of general or special service in the proper character, to complete his title thereto by expediting and recording an instrument under the hands of a notary-public, in the form or as nearly as may be in the form, adapted to the circumstances, of Schedule (JJ) hereto annexed; and on such instrument being recorded in the appropriate Register of Sasines, such heir shall be taken to be vested with the full right of the creditor in such security, and to be entered with the superior in the same manner and to the same effect as the original creditor himself.

129. In all cases of adjudication, whether for debt or in implement, or of constitution and adjudication, whether for debt or in implement, in which the adjudger has obtained a decree of adjudication or of constitution and adjudication in the manner and to the effect provided by this Act, where the subjects contained in such decree are heritable securities, it shall be competent for the adjudger to complete his title to such securities, either by recording the abbreviate of adjudication in the appropriate Register

8 and 9
Vict., c. 31,
§ 4.

Form of
completing
title of heir
where ex-
ecutors are
excluded.

8 and 9
Vict., c. 31,
§ 4.

Adjudgers
may com-
plete their
title by re-
cording
abbreviate
of adjudica-
tion.

8 and 9
Vict., c. 31,
§ 3.

21 and 22
 Vict., c. 76,
 § 27.

of Sasines, which registration shall have the same effect as if at the date thereof the adjudger had been entered and infeft on a charter of adjudication, or by recording the said decree in the appropriate Register of Sasines, in which case he shall be in the same position as if an assignation of such heritable securities had been granted in his favour by the ancestor or person whose estate is adjudged, and as if such assignation had been duly recorded in the appropriate Register of Sasines at the date of so recording such decree.

Unregis-
 tered secu-
 rity or
 assignation
 to be avail-
 able to exe-
 cutors, &c.
 of grantee.

17 and 18
 Vict., c. 62,
 § 3.

130. In the event of an heritable security from which executors shall not have been excluded, dated before or after the commencement of this Act, not being constituted by infeftment during the lifetime of the grantee, or of any assignation, dated before or after the commencement of this Act, of a security from which executors shall not have been excluded but which has been constituted by infeftment, not being completed by infeftment during the lifetime of the assignee, and where such grantee or assignee shall be in life at the commencement of this Act, such security or assignation shall form a warrant for an instrument in the form or as nearly as may be in the form of Schedule (MM) hereto annexed under the hands of a notary-public, being passed upon the same in favour of the executors of the creditor duly confirmed, whether the same be executors-nominate or executors-dative, or in favour of the disponees or assignees of such security or of the moveable estate of such creditor under any deed or conveyance *inter vivos* or *mortis causa*, or in favour of any legatees of such security; and where such executors or disponees or assignees, being more than one, shall not be entitled to such security wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of such executors or disponees or assignees, and the survivors or survivor of them, unless such a destination be expressly excluded by the terms of the conveyance, or deed, or writing; and where executors shall be excluded from such security or the creditor has died before the commencement of this Act, the security or assignation, as the case may be, shall form a warrant for a notarial instrument, as aforesaid, in favour of any disponees or assignees or legatees of such security, or of the heritable estate of such creditor under any deed or conveyance by him *inter vivos* or *mortis causa*, or under any testamentary deed or writing by him within the meaning of the twentieth section of this Act, or in favour of the heirs of such creditor having right to the security by decree of general or special service as heir to such creditor; and on such instrument being recorded in the appropriate Register of Sasines, the executors or disponees or assignees or legatees or heirs, as the case may be, in whose favour such instrument is expedite, shall be vested

with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself.

131. Nothing contained in this Act shall affect or interfere with the present law and practice in regard to the liability of the lands contained in any security, or of the debtor, or with the rights and remedies of the creditor, or of the creditors of the creditor.

This Act not to affect liability of debtors on their lands.
[New.]

132. Any heritable security, whether dated before or after the commencement of this Act, constituted by infeftment as aforesaid, may be effectually renounced and discharged, in whole or in part, and the lands therein contained effectually disburdened of the same, by a discharge in the form or as nearly as may be in the form of Schedule (NN) hereto annexed, and by the registration of such discharge in the appropriate Register of Sasines, as aforesaid.

How any heritable security may be renounced or discharged.
8 and 9 Vict., c. 31, § 8.

133. Any heritable security constituted as aforesaid may be restricted, as regards any portion of the lands therein contained, by a deed of restriction in the form or as nearly as may be in the form of Schedule (OO) hereto annexed, and on such deed of restriction being recorded in the appropriate Register of Sasines the security shall be restricted accordingly to the lands therein contained, other than those discharged by such deed of restriction, which lands thereby discharged shall be released from the security to the same effect as if the same had never been contained in such security.

Heritable security, how restricted.
[New.]

134. The whole provisions, enactments, and forms of this Act relative to bonds and dispositions in security shall be taken to apply and shall apply as nearly as may be to all heritable securities, unless in so far as such provisions, enactments, or forms may be inapplicable to the form or objects of such securities.

Act to apply to all heritable securities.
[New.]

135. Nothing in this Act contained shall prevent the constitution, transmission, or extinction of heritable securities in the forms in use prior to the first day of *October* One thousand eight hundred and forty-five.

Parties may use the present forms if they see fit.
8 and 9 Vict., c. 31, § 9.

136. Nothing herein contained shall be construed to prevent the town-clerks of royal burghs in *Scotland* who were appointed to their respective offices prior to the first day of *October* One thousand eight hundred and forty-five, during the existence of their respective rights of office, from exacting and receiving the same fees in respect of the recording of assignations or conveyances of

10 and 11 Vict., c. 50, § 13.
Fees to be taken by town-clerks

of royal burghs and keepers of registers in office at 1st Oct. 1845, during their respective rights of office, &c.

8 and 9
Vict., c. 31,
§ 10.
10 and 11
Vict., c. 50,
§ 11.

a bond and disposition in security, or of abbreviates of adjudication, writs of acknowledgment, or instruments for completing a title to such securities under this Act, as the same town-clerks would before the said first day of *October* One thousand eight hundred and forty-five have been legally entitled to exact or receive on their own account, in respect of passing the infestments within burgh, and preparing and recording the instruments of sasine and resignation rendered unnecessary by such assignations, conveyances, writs of acknowledgment, instruments or abbreviates of adjudication, as aforesaid; and also nothing shall be construed to prevent the said town-clerks who were appointed to their respective offices prior to the thirtieth day of *September* One thousand eight hundred and forty-seven, during the existence of their respective rights of office, from exacting and receiving the same fees in respect of recording bonds and dispositions in security, or other deeds constituting heritable securities, over lands held burgage, as the same town-clerks would prior to that date have been legally entitled to exact or receive on their own account, in respect of passing the infestment within burgh, and preparing and recording the instruments of sasine and resignation on such bonds and dispositions in security or other deeds: Provided always that in computing the said fees such instruments of sasine and resignation shall not be computed as of greater length than the writings actually recorded whereby such instruments of sasine and resignation have been rendered unnecessary; and all other keepers of Registers of Sasines who were in office on the first day of *October* One thousand eight hundred and forty-five and on the thirtieth day of *September* One thousand eight hundred and forty-seven respectively as aforesaid shall, during the existence of their respective rights of office, or until otherwise regulated by law, upon the registration by them of each assignation, conveyance, writ of acknowledgment, abbreviate of adjudication, or instrument aforesaid, for transferring or completing the title to such securities, or of each bond and disposition in security or other deed registered under the provisions of this Act, be entitled to the same fees as such keeper would have been entitled to upon the registration of an instrument of sasine of the same length in favour of the same party in reference to the same right, and to no other or further fee whatever.

This Act to apply to lands held by any description of tenure.
[*New.*]

Short clauses of

137. The whole of this Act shall apply to lands by whatever tenure the same may be held, except in so far as any of the provisions of this Act shall be limited expressly or by necessary implication to lands held by one particular tenure.

138. The short clauses of consent to registration for preservation, and for preservation and execution, contained in forms

numbers 1 and 2 of Schedule (B) hereto annexed, when occurring in any deed or conveyance under this Act, or in any deed or writing or document of whatsoever nature, and whether relating to lands or not, shall, unless specially qualified, import a consent to registration and a procuratory of registration in the Books of Council and Session, or other judges books competent, therein to remain for preservation; and also, if for execution, that letters of horning, and all necessary execution, shall pass thereon, upon six days charge, on a decree to be interponed thereto in common form.

139. It shall be competent for any female person of the age of fourteen years or upwards, and not subject to any legal incapacity, to act as an instrumentary witness in the same manner as any male person of that age, who is subject to no legal incapacity, can act according to the present law and practice, and it shall not be competent to challenge any deed or conveyance or writing or document of whatever nature, whether executed before or after the passing of this Act, on the ground that any instrumentary witness thereto was a female person.

140. In all cases where writs or deeds of any description are by this or any other Act permitted or directed to be engrossed on any conveyance or deed, it shall be competent, when necessary, to engross such deeds or writs on a sheet or sheets of paper, or of whatever other material the conveyance itself consists, added to such conveyance, provided that the engrossing of the deed or writ shall be commenced on some part of the conveyance or deed itself on which it is permitted or directed to be engrossed; and the first of such additional sheets shall be chargeable with the stamp-duty applicable to the writ or deed partly engrossed thereon, and subsequent sheets (if any) shall be chargeable with the appropriate progressive duty.

141. All conveyances and deeds, and all writings whatsoever which may be recorded in any Register of Sasines, shall, previous to being presented for registration, have a warrant of registration indorsed or written thereon in or as nearly as may be in such one or other of the forms of warrants of registration contained in the following schedules hereto annexed, viz. Schedule (F), No. 2, and Schedule (H), No. 1, 2, and 3, as may be applicable to the particular conveyance, deed, or writing so to be presented, which warrant shall in every case specify the person or persons on whose behalf the conveyance, deed, or writing is presented for registration, and in the case of lands not held by burgage tenure the register or registers of the county or counties, and in the case of lands held by burgage tenure the register or registers of the

burgh or burghs in which the lands to which such conveyance or deed or writing has reference are situated, and shall be signed by such person or persons, or by his or their agent or agents, and in the latter case the warrant may be signed either by an individual agent or by the subscription of any firm of which such agent may be a partner: Provided always that nothing herein contained shall render it necessary to have a warrant of registration indorsed or written upon any conveyance, deed, or writing of or relating to lands held by burgage tenure which according to the existing law or practice may be recorded in any burgh register without such warrant.

Recording of
conveyances
in the Re-
gister of
Sasines
authorised.

21 and 22
Vict., c. 76,
§ 19.
23 and 24
Vict., c. 143
§ 13.

142. All conveyances and deeds, and all instruments hereby authorised to be recorded in the Register of Sasines, may, with warrants of registration written thereon respectively, be recorded at any time in the life of the person on whose behalf the same shall be presented for registration, in the same manner as instruments of sasine, or of resignation and sasine, or of cognition and sasine, or notarial instruments, are at present recorded, and the same when presented for registration shall be forthwith shortly registered in the minute books of the said register in common form, and shall with all due despatch be fully registered in the register books, and thereafter re-delivered to the parties with certificates of due registration thereon, which shall specify the date of presentation, and the book and folios in which the engrossment has been made, and shall be subscribed by the keeper of the register, and shall be probative of such registration, and when so registered shall in competition be preferable according to the date of registration, and the date of entry in the minute book shall be held to be the date of registration; provided that where two or more deeds or conveyances transmitted by post in terms of "The Land Writs Registration (*Scotland*) Act 1868," shall be received by the keeper of the Register of Sasines at the same time, the entries thereof in the presentment book and minute book shall be of the same year, month, day, and hour, and such deeds and conveyances shall be deemed and taken to be presented and registered contemporaneously; and extracts of all such conveyances or deeds, warrants of registration, and instruments so recorded shall make faith in all cases as the recorded conveyances or deeds, warrants, and instruments themselves would have done, except where any such conveyance or deed, warrant, or instrument so recorded shall be offered to be improven.

Convey-
ances and
instruments
may be re-
corded of
new.

143. In case of any error or defect in any instrument or in the recording of any deed or conveyance, or of any warrant of registration, recorded or to be recorded in any Register of Sasines, or in any warrant of registration thereon, or in the recording of

such warrant, it shall be competent of new to make and record such instrument, or of new to record the deed or conveyance with the original or a new warrant of registration, as the case may require.

144. The Act of the Sixth and Seventh of His late Majesty King William the Fourth, chapter thirty-three, intituled *An Act to amend and regulate the Law of Scotland as to Erasures in Instruments of Sasine and of Resignation ad remanentiam*, shall extend and be applicable to all instruments.

145. It shall not be competent to challenge the validity of any existing warrants of registration upon conveyances under the Titles to Lands (*Scotland*) Acts, of the Twenty-first and Twenty-second years of the reign of Her present Majesty, chapter seventy-six, and the Twenty-third and Twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-three, hereby repealed, or the real rights completed in the persons of those in whose favour the said conveyances are recorded by the registration thereof in the appropriate Register of Sasines, on the ground that the said warrants of registration are disconform to the terms of the Schedules annexed to the said Acts, provided that the said warrants contain the name of the party or parties on whose behalf the warrant is written, and contain the designation of such party or parties, or refer to the same as given in the conveyance on which such warrants are engrossed, and are signed by the party or parties themselves, or by his or their agent or agents, either individually or as a partnership; and the designation "agent" or "agents," without any further designation, shall be valid and sufficient in the case of all warrants expedite in virtue of the said repealed Acts.

146. Where any real burden, condition, provision, or limitation, or other matter has been or shall be appointed to be inserted or referred to in the instruments of sasine or of resignation *ad remanentiam*, or other instruments applicable to any lands, such real burden, condition, provision, or limitation, or other matter, shall be inserted or referred to in manner provided by this Act in every instrument applicable to such lands to be expedite in virtue of this Act, and in every conveyance or deed of or relating to such lands the registration of which in the Register of Sasines is by this Act equivalent to infeftment or resignation *ad remanentiam*: Provided always that where such real burdens, conditions, provisions, limitations, or other matters, have been already inserted in any conveyance or deed or instrument recorded in the appropriate Register of Sasines, it shall not be necessary to insert the same at length in any subsequent conveyance or deed or instrument, pro-

Recorded instruments not to be challenged on the ground of erasures.

20 and 21 Vict., c. 76, § 33.

23 and 24 Vict., c. 143, § 19.

Not competent to challenge existing warrants of registration on certain grounds.

[*New.*]

Obligations appointed to be inserted in instruments of sasine shall be inserted in notarial instruments.

21 and 22 Vict., c. 76, § 29.

23 and 24 Vict., c. 143, § 31.

vided the same be therein referred to in manner provided in the ninth or tenth sections of this Act, as the circumstances of the case may require.

Prohibition
against sub-
infeudation
not to be
affected.

21 and 22
Vict., c. 76,
§ 28.

147. Where the investiture of any lands has imposed or shall impose a prohibition against sub-infeudation or against alternative holding, nothing contained in this Act shall operate to authorise sub-infeudation or an alternative holding in respect to such lands; and nothing in this Act contained shall be construed to take away or impair any of the rights or remedies competent to a superior against his vassal lying out unentered.

In all ques-
tions under
the Bank-
rupt Acts in
Scotland,
the dates of
registration
of assigna-
tions, &c. to
be held to
be the dates
of the in-
struments.

8 and 9
Vict., c. 31,
§ 7.

148. In all questions under an Act passed by the Parliament of Scotland in the year One thousand six hundred and ninety-six, intituled *Act for declaring Nottour Bankrupts*, and under an Act passed in the Fifty-fourth year of the reign of His Majesty King George the Third, intituled *An Act for rendering the Payment of Creditors more equal and expeditious in Scotland*, and under an Act passed in the session of Parliament held in the Nineteenth and Twentieth years of the reign of Her present Majesty, intituled *An Act for regulating the sequestration of the Estates of Bankrupts in Scotland*, the date of the registration of all conveyances or deeds and discharges granted or taken in pursuance of this Act shall be held to be the date of such conveyances or deeds and discharges respectively, without prejudice to their validity or invalidity in other respects.

Deeds and
instruments
may be
partly writ-
ten and
partly
printed or
engraved.

21 and 22
Vict., c. 76,
§ 34.
23 and 24
Vict., c. 143,
§ 20.

149. All deeds and conveyances, and all documents whatever, mentioned or not mentioned in this Act and whether relating or not relating to land having a testing clause, may be partly written and partly printed or engraved or lithographed: Provided always that in the testing clause the date, if any, and the names and designations of the witnesses, and the number of the pages of the deed or conveyance or document, if the number be specified, and the name and designation of the writer of the written portions of the body of the deed or conveyance or document shall be expressed at length, and all such deeds, conveyances, and documents shall be as valid and effectual as if they had been wholly in writing: Declaring that no such deeds, conveyances and documents executed prior to the commencement of this Act shall be challengeable on the ground that the name of the writer of the written portions of the testing clause is not mentioned.

Debts affect-
ing lands
exchanged
for other
lands to

150. When any lands disposed before or after the commence-
ment of this Act, under the authority of an Act of Parliament, in
excambion for other lands, are burdened with debts, the lands so
disposed shall, from and after the date of registration, whether

before or after the commencement of this Act, in the appropriate Register of Sasines of the contract or deed of excambion of such lands, be freed and disburdened of such debt, so far as previously affecting the same, and shall be burdened with the debts, if any, which previously affected the lands acquired in exchange for the same, in the order of preference in which such debts were a burden upon such last-mentioned lands: Provided always, in the case of excambions after the thirty-first day of *December* One thousand eight hundred and sixty-eight, that before any such excambion is authorised (in addition to such procedure as may be prescribed by such Act) such intimation as the Court of Session may consider necessary shall be made to all creditors having interest, and such creditors shall be entitled to state any objections thereto, of which the Court shall judge: Provided also that in such contract or deed of excambion, whether executed before or after the commencement of this Act, or in a schedule subscribed as relative thereto, and declared to be part thereof, and recorded therewith, there have been or shall be set forth as to each of the said debts the following particulars, namely, the amount of the debt, the date of recording the writ by which its constitution was originally published, the register in which the same was so published, the name and designation of the original creditor, and, if the debt has been transferred, the name and designation of the creditor understood to be in right thereof for the time, and the date of recording the writ whereby his right was published, and the register in which the same was so published: Provided further that in such contract or deed of excambion such debts have been or shall be expressly declared to burden the lands to which the same are transferred as aforesaid.

151. From and after the commencement of this Act, and during the period to which the rights of any town-clerk appointed prior to the eighth day of *March* One thousand eight hundred and sixty, in any burgh in which lands are held burgage, and no register of sasines is kept, extend under legal appointment, and no longer, no conveyance or deed of or relating to lands in such burgh held burgage, and which under the provisions of this Act shall come in place of any conveyance or deed which such town-clerk would by law have been exclusively entitled to prepare had the Act Twenty-third and Twenty-fourth *Victoria*, chapter one hundred and forty-three, or this Act, not been passed, shall, as regards such lands, be validly recorded in any register of sasines, unless the warrant of registration of such conveyance or deed shall be subscribed or indorsed with the signature of such town-clerk, which signature he shall be bound to attach or indorse on receipt in respect thereof of one-half of the fees which would have been chargeable by him for the preparation of the convey-

affect such other lands in lieu thereof. 23 and 24 Vict., c. 143, § 28.

Provision for lands held burgage where no burgh register of sasines is kept. 23 and 24 Vict., c. 143, § 22.

ance or deed which he would have been entitled to prepare as aforesaid, and of no other fees ; but if the said conveyance or deed be prepared by him, he shall not be entitled in respect of his signature as aforesaid to any other beyond the ordinary fees for preparing such conveyance or deed : Provided always that in estimating the said fees the said conveyance or deed, which he would have been entitled to prepare as aforesaid, shall not be computed as of any greater length than the conveyance or deed signed by such town-clerk.

Provision
for lands in
the burgh of
Paisley held
by booking
tenure.

23 and 24
Vict., c. 143,
§ 23.

152. All the provisions of this Act applicable to lands held by the ordinary burgage tenure shall be applicable also to lands in the burgh of *Paisley* held by the peculiar tenure of booking ; and all the provisions of this Act applicable to resignation, and to instruments of sasine, and of resignation and sasine, and of cognition and sasine, and Registers of Sasines, respectively, of lands held burgage, shall be applicable also to booking, and to instruments of resignation and booking, and to extract bookings, and to the Register of Booking, respectively, of lands in the said burgh of *Paisley* held by said tenure of booking : Provided always that nothing in this Act contained shall prevent the constitution, transmission, or completion of rights to lands held by the said tenure of booking by the forms competent prior to the passing of this Act.

Fees of
town-clerks
appointed
prior to 8th
March 1860
reserved,
but no town-
clerks ap-
pointed after
that date to
have claims
for compen-
sation for
loss of fees,
&c.

8 and 9
Vict., c. 31,
§ 10.
23 and 24
Vict., c. 143,
§ 21.

153. No town-clerk of any royal or other burgh in *Scotland* who has been appointed subsequent to the eighth day of *March* One thousand eight hundred and sixty shall have any exclusive right or privilege of preparing or expeding any conveyance or deed of or relating to land, or shall have any right to compensation in respect of any alterations affecting the rights, duties, or emoluments of town-clerks, which may be made by this Act, or any Act which may hereafter be passed : Provided always that town-clerks, whether sole or joint, who, according to the law and practice prior to the eighth day of *March* One thousand eight hundred and sixty, were exclusively entitled to prepare instruments of sasine or of resignation and sasine in burgage subjects, shall, each during the period to which his rights shall extend under any legal appointment or agreement existing at the fore-said date, but no longer, be entitled to claim and receive from the person presenting for registration in the Burgh Register of Sasines kept by such town-clerk any conveyance or deed which, when recorded, will operate the effect of a recorded instrument of sasine or of resignation and sasine, such fees as, but no other fees than, he would have had right to draw and to appropriate to his own use and benefit in respect of the preparation and recording of the instrument of sasine or of resignation and sasine which, if this

Act had not been passed, must have been recorded in the Burgh Register of Sasines, in order to operate the like effect as the recording therein of such conveyance or deed; and the person recording such conveyance or deed in the said Register of Sasines shall be bound to pay such but no other fees to such town-clerk in respect thereof: Provided always that in estimating the said fees such instruments of sasine or of resignation and sasine shall not be computed as of greater length than the writings actually recorded whereby such instruments of sasine or of resignation and sasine have been rendered unnecessary.

154. It shall be competent for the town-clerk of any burgh to expedite and record, and for the keeper of any burgh or other Register of Sasines, reversions, &c., to record, any conveyance or deed in which such town-clerk or keeper may be personally interested, either individually or as trustee for another or otherwise; and no conveyance or deed expedite or recorded prior to the date of the passing of this Act, or which may hereafter be expedite or recorded, shall be challengeable or in any way affected by reason of personal interest in the town-clerk or Keeper of the Register by whom the same has been expedite or recorded as aforesaid: Provided that this enactment shall not prejudice or affect any action or proceeding which may have been instituted prior to the passing of this Act.

Official acts of town-clerks and keepers of registers of sasines not to be affected by their personal interests in recorded writs.

23 and 24 Vict., c. 143, § 26.

155. It shall be competent, before or after execution of any inhibition, whether by separate letters or contained in a summons before the Court of Session, to register in the General Register of Inhibitions a notice thereof, setting forth the names and designations of the persons by and against whom the same is raised, and the date of signeting the same, in the form or as nearly as may be in the form of Schedule (PP) hereto annexed; and where any such inhibition and the execution thereof shall be duly registered in the General Register of Inhibitions not later than twenty-one days from the date of the registration therein of such notice thereof, such inhibition shall take effect from the date when such notice was registered as aforesaid, but otherwise only from the date of the registration of such inhibition and the execution thereof; and no inhibition shall have any effect against any act or deed done, committed, or executed prior to the registration of such notice thereof, or of such inhibition and the execution thereof, as the case may be.

Inhibitions to take effect from date of registration of notice, &c.

[New.]

156. Letters of inhibition may be in the form as nearly as may be of the Schedule (QQ) to this Act annexed; and letters of inhibition in such form shall have all the like force and effect as letters of inhibition in the form in use at the passing of this Act.

Short form of letters of inhibition.

[New.]

No inhibition to have effect against *acquirenda*,
[*New.*]

unless in case of heir under entail or other indefeasible title.

157. No inhibition to be recorded from and after the thirty-first day of *December* One thousand eight hundred and sixty-eight shall have any force or effect as against any lands to be acquired by the person or persons against whom such inhibition is used after the date of recording such inhibition, or of recording the previous notice thereof prescribed by this Act, as the case may be: Provided always that where such inhibition is used against a person or persons who shall thereafter succeed to any lands which, at the date of recording the inhibition or previous notice thereof, as the case may be, were destined to such person or persons by a deed of entail, or by a similar indefeasible title, then and in that case such inhibition shall affect the said person or persons in so far as regards the lands so destined, and to which he or they shall succeed as aforesaid, but no further.

Inhibitions on depending summons to be recalled on petition to Lord Ordinary.
[*New.*]

158. From and after the commencement of this Act it shall be competent to the Lord Ordinary in the Court of Session, before whom any summons containing warrant for inhibition shall be enrolled as judge therein, or before whom any action on the dependence whereof letters of inhibition have been executed, has been or shall be enrolled as judge therein, and to the Lord Ordinary on the Bills in time of vacation, on the application of the defender or debtor by petition duly intimated to the creditor or pursuer, to which answers may be ordered, to recall or restrict such inhibition on caution, or without caution, and dispose of the question of expenses, as shall appear just; provided that his judgment shall be subject to the review of the Court by a reclaiming note duly lodged within ten days from the date thereof.

Litigiousness not to begin before date of registration of notice of summons.
[*New.*]

159. It shall be competent to register in the General Register of Inhibitions a notice of any signeted summons of reduction of any conveyance or deed of or relating to lands, and in the Register of Adjudications a notice of any signeted summons of adjudication or of constitution and adjudication combined for debt or in security or in implement, which notice shall set forth the names and designations of the pursuer and defender of such action and the date of signeting such summons in the form or as nearly as may be in the form of Schedule (RR) hereto annexed; and no summons of reduction, constitution, adjudication, or constitution and adjudication combined, shall have any effect in rendering litigious the lands to which such summons relates, except from and after the date of the registration of such notice.

Right to heirship moveables abolished.
[*New.*]

160. From and after the passing of this Act no heir-of-line of a party deceased shall be entitled to claim in that character any portion of the moveable estate of such predecessor as heirship moveables, such claim being hereby abolished.

161. Any judgment pronounced by the Lord Ordinary in Judgment of virtue of this Act shall be subject to review by a reclaiming note Lord Ordinary in ordinary form; and the judgment of either Division of the Bills subject Court upon such reclaiming note, or upon any advocacy or ap- to review of peal, shall be subject to review by appeal to the House of Lords, Inner- House, and or in any other competent mode or form; but the judgments of judgments in certain the Lord Ordinary and of the Court respectively, if not so brought cases to be under review, and whether the same shall have been pronounced final. in absence of the respondent or not, shall be final, and not sub- 10 and 11 ject to review in any mode or form whatever; provided always Vict., c. 47, that the judgments of the Lord Ordinary in petitions relating to § 20. the forfeiture or relinquishment of superiority under this or any 10 and 11 of the repealed Acts, if not so brought under review, and the § 20. judgment of either Division of the Court of Session upon a re- claiming note against such judgment of the Lord Ordinary, whe- ther such judgment shall have been pronounced in absence of the respondent or not, shall be final and conclusive, and not subject to review in any mode or form whatever; and it shall be compe- tent to the Lord Ordinary, or to either Division of the Court re- viewing any judgment of the Lord Ordinary, if it shall appear to him or them to be just in the whole circumstances of the case, to find and decern in ordinary form for the expenses of any pro- ceedings.

162. It shall be lawful for the Court of Session from time to Court of time to pass Acts of Sederunt fixing and regulating the fees pay- Session may able to town-clerks and keepers of Registers of Sasines in burghs fix and re- gulate fees. for and with respect to all deeds, conveyances, and proceedings 8 and 9 under this Act, and the recording of the same; and the said Vict., c. 31, Court may either make a general table of fees which shall be ap- § 11. plicable to all the burghs in *Scotland*, or may make special tables 10 and 11 of fees which shall be applicable to any one or more of such Vict., c. 47, burghs, as they think fit; and the tables of fees applicable to § 28. each burgh shall come into operation on the death, resignation, 10 and 11 or removal of any town-clerk of such burgh who was appointed Vict., c. 48, prior to the eighth day of *March* One thousand eight hundred § 21. and sixty; and it shall not be lawful for any town-clerk, or the 10 and 11 keeper of the Register of Sasines of any burgh, who shall have Vict., c. 49, been appointed after the said eighth day of *March* One thousand § 11. eight hundred and sixty, to demand or receive any higher fees 10 and 11 for or in respect of any deeds or conveyances or proceedings under Vict., c. 50, this Act, or the recording thereof, than the fees specified in the § 12. table which for the time shall be applicable to such burgh; and 10 and 11 the said Court may meet for the purpose of passing and may Vict., c. 51, pass all such Acts of Sederunt and rules of Court as they deem § 28. proper for carrying into effect the purposes of this Act, and that 23 and 24 either during session or vacation, and may from time to time re- Vict., c. 143, § 24.

peal Acts of Sederunt and rules of Court, or alter such Acts and rules of Court and tables of fees : Provided that all Acts of Sederunt and rules of Court passed under the authority of this Act shall, within one month after the date thereof, be transmitted by the Lord President of the said Court to one of Her Majesty's principal Secretaries of State, that the same may be laid before both Houses of Parliament ; and until such Act or Acts or rule or rules of Court shall be passed, all Acts of Sederunt and rules of Court now in force passed under the authority of any of the Acts of Parliament hereby repealed, and all tables of fees thereby sanctioned, shall remain in force as Acts of Sederunt, rules of Court, and tables of fees for the purposes of this Act.

Old forms
of convey-
ances may
be used.

163. Nothing contained in this Act shall prevent the constitution, transmission, completion, or extinction of land rights, or of securities affecting lands, in the forms which were in use or competent for these purposes prior to the passing of the Acts hereby repealed, except in so far as such prior forms are hereby expressly abolished ; and, notwithstanding the repeal of the said Acts, the same shall be held to be still in force so far as regards any reference which may be made to them or any of them in any Statute not hereby repealed, and to the effect of giving full effect to such reference.

SCHEDULES referred to in foregoing Act.

SCHEDULE (A).

No. 1.

Acts and part of Act Repealed.

Date of Act.	Title.	Extent of Repeal.
8 and 9 Vict., c. 31,	An Act to facilitate the Transmission and Extinction of Heritable Securities for Debt in Scotland.	The whole.
8 and 9 Vict., c. 35,	An Act to simplify the Form and diminish the Expense of obtaining Infeftment in heritable property in Scotland.	Section sixth in the copy No. 2 of this Schedule.

Date of Act.	Title.	Extent of Repeal.
10 and 11 Vict., c. 47,	An Act to amend the Law and Practice in Scotland as to the Service of Heirs.	The whole.
10 and 11 Vict., c. 48,	An Act to facilitate the Transference of Lands and other Heritages in Scotland not held in Burgage Tenure.	The whole.
10 and 11 Vict., c. 49,	An Act to facilitate the Transference of Lands and other Heritages in Scotland held in Burgage Tenure.	The whole.
10 and 11 Vict., c. 50,	An Act to facilitate the Constitution and Transmission of Heritable Securities for Debt in Scotland, and to render the same more effectual for the Recovery of Debts.	The whole.
10 and 11 Vict., c. 51,	An Act to amend the Practice in Scotland with regard to Crown-charters and Precepts from Chancery.	The whole.
13 and 14 Vict., c. 13,	An Act to render more simple and effectual the Titles by which congregations or Societies associated for purposes of Religious Worship or Education in Scotland to hold Real Property required for such Purposes.	The whole.
17 and 18 Vict., c. 62,	An Act to extend the Benefits of two Acts of Her Majesty relating to the Constitution, Transmission, and Extension of Heritable Securities in Scotland.	The whole.
21 and 22 Vict., c. 76,	An Act to simplify the Forms and diminish the Expense of completing Titles to Land in Scotland.	The whole.
23 and 24 Vict., c. 143,	An Act to extend certain Provisions of the Titles to Land (Scotland) Act, 1858, to Titles to Land held by Burgage Tenure, and to amend the said Act.	The whole.

No. 2.

CAP. XXXV.

An Act to simplify the Form and diminish the Expense of obtaining Infestment in Heritable Property in Scotland.—[21st July 1845.]

Whereas it is expedient to simplify the form and diminish the expense of obtaining infestment in heritable property in Scotland: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of October in the present year One thousand eight hundred and forty-five it shall not be necessary to proceed to the lands in which sasine is to be given, or to perform any act of infestment thereon, but sasine shall be effectually given therein and infestment obtained by producing to a notary-public the warrants of sasine and relative writs, as now in use to be produced at taking infestment, and by expeding and recording in the General Register of Sasines or the Particular Register of Sasines applicable to the lands contained in the warrant of infestment, in manner hereinafter directed, an instrument of sasine, setting forth that sasine had been given in the said lands, and subscribed by the said notary-public and witnesses, according to the form and as nearly as may be in the terms of Schedule (B) hereto annexed; and such form of infestment shall be effectual, whether the lands lie contiguous or discontinuous, or are held by the same or by different titles, or of one or more superiors, or whether the deed entitling the party to obtain infestment be dated prior or subsequent to the present Act, or whether the precept of sasine therein be in the form heretofore in use, or in the form authorised by the present Act.

How sasine
to be given
in future.

Instruments
of sasine to
be entered
and record-
ed.

II. And be it enacted that from and after the said first day of October every such instrument of sasine shall be recorded in manner heretofore in use with regard to instruments of sasine, and the Keepers of the Registers of Sasines are hereby required to receive and register the same accordingly; and such instrument of sasine, being so recorded, shall in all respects have the same effect as if sasine had been taken and an instrument of sasine duly recorded according to the law and practice heretofore in use.

May be re-
corded at
any time,
but the date

III. And be it enacted that from and after the said first day of October every such instrument of sasine may be competently and effectually recorded at any time during the life of the party

in whose favour such instrument has been expedite, but the date of presentment and entry set forth on any such instrument by the Keeper of the Record shall be taken to be the date of the instrument of sasine and infeftment.

of the presentment to be the date of the infeftment.

IV. And be it enacted that in case of any error or defect in any such instrument of sasine, or in the recording thereof, it shall be competent of new to make and record an instrument of sasine, which shall have effect from the date of the recording thereof, as if no previous instrument or instruments had been made or recorded.

In case of error or defect, another instrument may be recorded.

V. And be it enacted that in all deeds containing a precept of sasine such precept may be in the form and as nearly as may be in the terms of the Schedule (A) hereto annexed, and the instrument of sasine on any such deed shall be in the form and as nearly as may be in the terms of the said Schedule (B) hereto annexed, which precepts and instruments of sasine respectively shall be as valid and effectual as the precepts and instruments of sasine heretofore in use.

Forms of the precept and instrument of sasine.

VI. And be it enacted that where infeftment is to be completed under a precept issuing from the office of Chancery, which precept has hitherto been directed to the Sheriff of the county in which the lands or some part thereof lie, such precept shall, after the said first day of October, be addressed to any notary-public: Provided always that such precept shall be null and void unless an instrument of sasine thereon be recorded in the General Register of Sasines, or the Register of Sasines applicable to the lands therein contained, before the first term of Whitsunday or Martinmas posterior to the date of such precept, without prejudice to a new precept being issued as heretofore, and that before such precept is issued from Chancery the retour duties and casualties due to the Crown shall be paid to the proper officer there, who shall account to the Exchequer for the same in like manner as the Sheriffs were wont to do; and the same officer shall also receive at the same time certain fees on behalf of the Sheriffs, Sheriffs-substitute, and Sheriff-clerks of the counties in which the lands lie, and on which sasine would have been taken according to the form heretofore in use, and to whom such officer shall account for the same, in place of the fees which they have heretofore been in use to receive, but such fees shall be paid only during the existence of the respective interests of the present Sheriffs, Sheriffs-substitute, and Sheriff-clerks in their respective offices; and the Lords of Council and Session are hereby authorised and required, by an Act or Acts of Sederunt, to regulate and determine the amount of the fees to be so received on behalf of each Sheriff, Sheriff-substitute, and Sheriff-clerk, having due regard to the existing interest of each.

Precept from Chancery to be issued to notaries upon payment of retour duties and casualties.

Fees to be paid to Sheriffs and Sheriff-clerks for a limited period.

Repealed by this Act.

Forms of
burgage sa-
sines to con-
tinue as at
present.

VII. And whereas it is not hereby intended to make any alterations in the law with regard to instruments of sasine and instruments of cognition, and sasine of subjects held burgage, or by any similar mode of tenure known and effectual in law, excepting as after specified; be it enacted that the forms and modes of registration of these instruments shall continue the same as at present, excepting only that the same shall be valid and effectual, if attested by the town-clerk as a notary, without the addition of his docquet, and by the witnesses, and that the delivery of symbols may lawfully be given, either on the ground of the subjects as heretofore, or within the council chamber of the burgh by delivery of a pen.

Instruments
of resigna-
tion *ad re-
manentiam*
regulated.

VIII. And be it enacted that instruments of resignation *ad remanentiam* shall be written in the same form as at present, but it shall be unnecessary for the notary-public to adhibit his long docquet to such instruments; and further, that all resignations *ad remanentiam* may be accepted by the superior himself, or on his behalf, by his known agent for the time, or by any person having a formal commission for that purpose.

Instruments
of resigna-
tion *in
favorem*
abolished.

IX. And whereas instruments of resignation *in favorem*, as separate instruments intended merely to connect the procuratory with the charter of resignation, are now rarely used in practice, and are wholly unnecessary; be it enacted that from and after the said first day of October the same shall be and are hereby abolished: Provided always that the deduction of titles required by the Act of the Parliament of Scotland made in the year One thousand six hundred and ninety-three, intituled "Act anent Procuratories of Resignation and Precepts of Seisin," to be made in such instruments, shall from and after the date of this Act be made in the charter of resignation.

Interpreta-
tion of Act.

X. And be it enacted that in the construction of this Act the words "notary-public" shall be held to mean a notary-public in Scotland duly admitted and practising there; the word "deed" shall be held to include any warrant or document upon which sasine may follow; and the word "lands," or the words "heritable property," shall be held to include houses, fishings, mills, minerals, patronages, teinds, and in general all heritable subjects or rights in which infeftment may be taken; and all words in the singular number shall be held to include a plurality of persons or things; and in general this Act shall be construed in the most liberal manner, so as to accomplish the objects thereby intended.

Alteration
of Act.

XI. And be it enacted that this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A).

FORM OF PRECEPT OF SASINE.

Moreover I desire any notary-public to whom these presents may be presented to give to the said *A.B.* or his foresaids sasine [or liferent sasine, or sasine in liferent and fee respectively, as the case may be] of the lands and others above disposed [if the deed be granted under the burden of a real lien or servitude, or any other incumbrance, condition, or qualification of the right, or under redemption, then there will be added here, "but always under the burden of the real lien," &c. (as the case may be) before specified]. IN WITNESS WHEREOF, &c. [here insert a testing clause in legal form.]

SCHEDULE (B).

FORM OF INSTRUMENT OF SASINE.

At there was, by or on behalf of *A.B.* of *Z.*, Esquire, presented to me, notary-public subscribing, a disposition [or other deed or an extract of a deed (as the case may be)] granted by *C.D.* of *Y.*, Esquire, and bearing date as in the precept of sasine hereinafter inserted [here describe also any connecting deed or writ, or extract thereof, in virtue of which the sasine is to be given to *A.B.*], by which disposition the said *C.D.* sold, alienated, and disposed to the said *A.B.* [or, to *E.F.* (as the case may be)] and his heirs and assignees [here insert the destination, if any], heritably and irredeemably [or redeemably, or in liferent, or otherwise (as the case may be)] all and whole [here insert the description of the subjects conveyed; and if the disposition by *C.D.* was not to *A.B.* himself, but is vested in him as assignee, heir, or adjudger, or otherwise, in whole or in part, state the successive transferences, and the way in which he has right thereto], which disposition contains an obligation to infest [here state whether a se or de se, or both or either (as the case may be)] and a precept of sasine in the following terms [here insert the precept, which may be either according to the form at present in use, or according to the abbreviated form in Schedule (A)], in virtue of which precept I hereby give sasine [or liferent sasine, or sasine in liferent and fee respectively] to the said *A.B.* of the lands and others above described. [If the precept of sasine contains a reference to a real burden, or to any conditions or qualifications of the right, or to a power of redemption, then add, "but always under the burden of the real right, &c. before specified."]

IN WITNESS WHEREOF I have subscribed these presents, written on this and the preceding pages by *G.H.*, my clerk, before these witnesses, the said *G.H.* and *J.K.*, accountant in Edinburgh.

(Signed) *L.M.*, Notary-Public.

G.H., witness.

J.K., witness.

SCHEDULE (B).

No. 1.

Formal Clauses of a Disposition of Land, &c. not held Burgage

10 and 11
Vict., c. 48,
Sch. (A).

[*After the inductive and dispositive clauses the deed may proceed thus :*] With entry at the term of [*here specify the date of entry*]; to be holden the said lands and others [*or subjects*] a me [*or a me vel de me, as the case may be*]; and I resign the said lands and others [*or subjects*] for new infeftment or investiture; and I assign the writs, and have delivered the same according to inventory; and I assign the rents; and I bind myself to free and relieve the said disponent and his foresaids of all feu-duties, casualties, and public burdens; and I grant warrandice; and I consent to registration hereof for preservation [*or for preservation and execution*].
IN WITNESS WHEREOF [*insert a testing clause in the usual form*].

NOTE.—The clauses are assumed here as occurring in a disposition, but they may be used in other deeds and conveyances; and in the event of it being necessary to omit, vary, or qualify any one or more of them, this may be done, and the other clauses may be retained.

No. 2.

Formal Clauses of a Disposition of Land, &c. held Burgage.

10 and 11
Vict., c. 49,
Sch. (A).

[*After the inductive and dispositive clauses the deed may proceed thus :*] With entry at the term of [*here specify the date of entry*]; to be holden the said lands and others [*or subjects*] of her Majesty in free burgage; and I assign the writs, and have delivered the same according to inventory; and I assign the rents; and I bind myself to free and relieve the said disponent and his foresaids of all ground-annual, cess, annuity, and other public burdens; and I grant warrandice; and I consent to the registration hereof

for preservation [or for preservation and execution]. IN WITNESS WHEREOF [insert a testing clause in the usual form].

NOTE.—The clauses are assumed here as occurring in a disposition, but they may be used in other deeds and conveyances; and in the event of it being necessary to omit, vary, or qualify any one or more of them, this may be done, and the other clauses may be retained.

SCHEDULE (C).

Clause of Reference to Destinations and Conditions of Entail, &c,

[After inserting such part of the destination as may be thought necessary, add,] and to the other heirs specified in a disposition and deed of entail [or as the case may be] of the said lands executed by the deceased, *E.F.*, dated the day of in the year and recorded in the Register of Tailzies on the day of in the year , [or in the said disposition and deed of entail dated and recorded as aforesaid, or in a deed or instrument specify the deed or conveyance] recorded [specify Register of Sasines] upon the day of in the year the year].

[And after the description of the lands insert] but always with and under the conditions, provisions, and prohibitory, irritant and resolute clauses [or clause authorising registration in the Register of Tailzies, as the case may be], contained in the said disposition and deed of entail, dated and recorded as aforesaid [or in (specify deed or conveyance) recorded in (specify Register of Sasines) upon the day of in the year].

[And in subsequent clauses in which it is usual or requisite to refer again to the conditions of the entail, &c., the reference may be made thus:] but always with and under the conditions, provisions, and prohibitory, irritant and resolute clauses [or clause authorising registration in the Register of Tailzies, as the case may be] before referred to.

SCHEDULE (D).

Clause of Reference to Real Burdens, Conditions, &c., in Investiture.

[After the description of the lands, instead of inserting the burdens, &c., at length, these may be referred to as follows, viz.:] but always

10 and 11
Vict., c. 47,
Sch. (B).
10 and 11
Vict., c. 48,
Sch. (B).
10 and 11
Vict., c. 49,
Sch. (B).
10 and 11
Vict., c. 50,
Sch. (A).
10 and 11
Vict., c. 51,
Sch. (B) and
(C).
21 and 22
Vict., c. 76,
Sch. (L),
No. 3.
23 and 24
Vict., c. 143,
Sch. (H),
No. 2, and
Sch. (L).

10 and 11
Vict., c. 47,
Sch. (B).

10 and 11 with and under the real burdens, conditions, provisions, and limi-
 Vict., c. 48, tations [or such of these as may apply or have reference to the case]
 Sch. (C). specified in a deed [or instrument, here specify a deed or conveyance
 10 and 11 in which the burdens, &c., were first inserted, or any subsequent deed
 Vict., c. 49, or conveyance in which they are inserted, forming part of the pro-
 Sch. (C). gress of the titles to the lands] recorded [specify Register of Sasines,
 10 and 11 or, if the deed or conveyance as recorded has been previously referred
 Vict., c. 50, to, say in the said deed (or instrument) recorded as aforesaid] on
 Sch. (A). the day of in the year
 10 and 11
 Vict., c. 51, (C). and the day of in the year

[And in subsequent clauses in which it is requisite or usual to refer again to the burdens, &c. the reference may be made thus :] but always with and under the real burdens, conditions, provisions, and limitations [or such of these as may apply or have reference to the case] before referred to.

SCHEDULE (E).

Clause of Reference to Particular Description contained in a Prior Deed.

21 and 22 [After giving some leading name or names or some other distinc-
 Vict., c. 76, tive description of the lands as contained in the titles thereof and the
 Sch. (L), name of the county, and, in the case of lands held by burgage tenure,
 No. 1. the name of the burgh and county in which the lands lie, add] being
 23 and 24 the lands [or subjects] particularly described in the [here specify a
 Vict., c. 143, prior deed or instrument containing the particular description of the
 Sch. (H), lands or subjects] recorded [specify Register of Sasines, or if the deed
 No. 1. or instrument as recorded has been previously referred to say, in the
 said deed (or instrument) recorded as aforesaid] on the day
 of in the year

[If part only of lands is conveyed, describe such part and add, being part of the lands particularly described, &c.; or thus, being the lands (or subjects) as particularly described, &c., with the exception of, and describe the part excepted.]

SCHEDULE (F).

No. 1.

Clause of Direction specifying Part of Deed which Grantor desires to be recorded.

21 and 22 And I direct to be recorded in the Register of Sasines the part
 Vict., c. 76, of this deed from its commencement to the words [insert words] on
 Sch. (C).

the line of the page [and also the part from the words 23 and 24
 (insert words) on the line of the page to the words Vict., c. 143,
 (insert words) on the line of the page]. Or, I direct Sch. (C).
 the whole of this deed to be recorded in the Register of Sasines,
 with the exception of the part [or parts, as the case may be, specify-
 ing the part or parts excepted, as above].

No. 2.

*Warrant of Registration to be written on Deed where it is
 intended to record it in terms of a Clause of Direction*

Register the above deed in terms of the clause of direction 21 and 22
 therein contained on behalf of *A.B.* [insert designation] in the re- Vict., c. 76,
 gister of the county of *C.* [or if the writ contains land in more than Sch. (A),
 one county, in the registers of the counties of *C., D., E.,* and *F.,* or No. 1.
 if the lands be held burgage, in the register, or registers of the burgh 23 and 24
 of *M.,* or burghs of *M., N., O.,* and *P.* Vict., c. 143,
 of *M.,* or burghs of *M., N., O.,* and *P.* Sch. (A),
 No. 1.

(Signed) *A.B.* Do., Sch.

[or] *G.H.* (K).

W.S., Edinburgh, Agent.

[or] *J.K.,* and *L.,*

W.S., Edinburgh, Agents.

[or as the case may be]

SCHEDULE (G).

*Clause of Reference to Conveyance, containing general
 designation of lands.*

[After giving the general name or names of the lands and the 21 and 22
 name of the county, or burgh and county, as the case may be, add] Vict., c. 76,
 as particularly described in the disposition [or other deed, as the Sch. (L),
 case may be] granted by *C.D.,* and bearing date [here insert date], No. 2.
 and recorded in the [specify the Register of Sasines] on the
 day of in the year , and in which the lands
 hereby conveyed are declared to be designed and known by the
 said name of [here insert name], [or "as particularly described
 in the instrument (specify instrument) recorded, &c., and in which
 the lands hereby conveyed are declared," &c.] [If part only of
 lands is conveyed, then follow form for similar case given in Sche-
 dule (E).]

SCHEDULE (H).

No. 1.

Warrant of Registration to be written on a Conveyance, &c., when presented without Assignment apart, or with Writ of Resignation or other similar Writ thereon.

21 and 22
Vict., c. 76,
Sch. (A),
No. 1.
23 and 24
Vict., c. 143,
Sch. (A),
No. 1.

Register on behalf of *A.B.* [*insert designation*] in the register of the county of *C.* [*or if the conveyance, &c., or writ contains lands in more than one county, in the registers of the counties of C., D., E., and F., or, if the lands be held burgage, in the register of the burgh of M., or in the registers of the burghs of M., N., O., and P.*] [*or register, &c., along with assignment (or assignments) (or writ of resignation) hereon, in the register of the county of C., &c., or in the register of the burgh of M., &c., or otherwise as the case may be.*]

(Signed) *A.B.*,
[or] *G.H.*,
W.S., Edinburgh, Agent.
[or] *J.K. & L.*,
W.S., Edinburgh, Agents.
[or as the case may be]

No. 2.

Warrant of Registration to be written on a Conveyance, &c., when presented with Assignment apart, or Notarial Instrument.

21 and 22
Vict., c. 76,
Sch. (A),
No. 2.
23 and 24
Vict., c. 143,
Sch. (A),
No. 2.

Register on behalf of *A.B.* (*insert designation*) in the register of the county of *C.* [*or if the conveyance, &c., or writ contains lands in more than one county, in the registers of the counties of C., D., E., and F., or if the lands be held burgage, in the register of the burgh of M., or in the registers of the burghs of M., N., O., and P.*] along with the assignment [*or assignments, or notarial instrument*] docquetted with reference hereto [*or otherwise, as the case may be.*]

(Signed) *A.B.*,
[or] *G.H.*,
W.S., Edinburgh, Agent.
[or] *J.K. & L.*,
W.S., Edinburgh, Agents.
[or as the case may be]

No. 3.

Warrant of Registration to be written on a conveyance presented for registration propriis manibus.

Register on behalf of *A.B.*, (*insert designation*) in the register of the county of *C.* [*or if the conveyance, &c., or writ contains lands in more than one county, in the registers of the counties of C., D., E., and F., or if the lands be held burgage, in the register of the burgh of M., or in the registers of the burghs of M., N., O., and P.*] And also *ex propriis manibus* on behalf of *L.*, wife of the said *A.B.* in liferent [*or as the case may be*]. [New.]

(Signed) *A.B.*

SCHEDULE (I).

Instrument of Sasine in Burgage Subjects.

At there was by [*or on behalf*] *A.B.* [*design the* 10 and 11
Vict., c. 49,
Sch. (D). *disponsee or other person to whom sasine is given*] presented to me, notary-public subscribing, a disposition [*or other deed, or an extract of a deed, or any other warrant, as the case may be*] granted by *C.D.* [*here design the grantor*], and dated the day of [*here describe shortly any connecting deed or extract thereof in virtue of which sasine is given*] by which disposition [*or otherwise as the case may be*] the said *C.D.* sold, alienated, and disposed to the said *A.B.* [*or to E.F. as the case may be*], and his heirs and assignees whomsoever, [*here insert destination, if any*] heritably and irredeemably [*or redeemably in liferent, or otherwise, as the case may be*], all and whole [*here insert the description of the lands conveyed, and any real burdens, conditions, provisions, and limitations, or any reference to the same, all as in the disposition, and if the disposition by C.D. was not to A.B. himself, but has been acquired by him as assignee, heir, or adjudger, or otherwise, in whole or in part, state shortly the successive transferences, and the way in which he has right thereto*] which disposition contains an obligation to infeft the said *A.B.* [*or E.F., as the case may be*], to be holden of Her Majesty in free burgage, and also contains procuratory [*or a clause*] to make resignation of the said lands and others in favour of the said disponsee and his foresaids, for new infeftment [*or for new liferent infeftment, or for new infeftment in liferent and fee respectively, or as the case may be*]: in virtue of which procuratory the said lands and others were resigned; and in terms of the said disposition [*or otherwise as the case may be*] I hereby give sasine to the

said *A.B.* of the foresaid lands and others [*if the deed contains any conditions, &c., or any reference to the same as aforesaid, then add, "but always under the conditions, &c., before specified" or "referred to," as the case may be.*] IN WITNESS WHEREOF these presents, written on this and the preceding pages by *G.H.*, my clerk, are subscribed by me before these witnesses, the said *G.H.* and *J.K.*, also my clerk.

(Signed) *L.M.*, Notary-Public.

G.H., witness.

J.K., witness.

SCHEDULE (J).

Notarial Instrument in favour of Disponee or his Assignee, &c.

21 and 22
Vict., c. 76,
Sch. (B).
23 and 24
Vict., c. 143,
Sch. (B).

At there was by [*or on behalf of*] *A.B.* of *Z.*, presented to me, notary-public subscribing, a disposition [*or other deed, or an extract of a deed as the case may be*], granted by *C.D.* of *Y.*, and dated [*insert the date*], by which disposition [*or otherwise as the case may be*], the said *C.D.* sold, alienated, and disposed to the said *A.B.* [*or gave, granted, and disposed, or otherwise, as the case may be, to the said A.B.*] [*or to E.F.*], and his heirs and assignees [*insert the destination, if any, so far as may be necessary*], heritably and irredeemably [*or redeemably, or in liferent, or otherwise, as the case may be*], all and whole [*insert the description of the lands conveyed, and any real burdens, conditions, provisions, and limitations, or any reference to the same, all as in the disposition or the deed, &c.*] [*If the person expeding the instrument be other than the original disponee, add,*] As also there was presented to me [*here specify the title or series of titles by which such person acquired right, and the nature of his right.*] WHEREUPON this instrument is taken in the hands of *L.M.* [*insert name and designation of notary-public*] in the terms of the "Titles to Land Consolidation (Scotland) Act, 1868." IN WITNESS WHEREOF [*insert testing clause as in Schedule (I).*]

SCHEDULE (K).

Instrument of Resignation ad remanentiam.

21 and 22
Vict., c. 76,
Sch. (D).

At there was by [*or on behalf of*] *A.B.* [*here insert the name and designation of the superior*], presented to me, notary-public subscribing, a disposition [*or other deed or extract, as*

the case may be], dated the day of , granted by C.D. [here insert the name and designation of the vassal], being the vassal in the lands after described, holding the same of the said A.B. as his superior thereof, by which disposition the said C.D. disposed to the said A.B. and his heirs and assignees whomsoever [or as the case may be] all and whole [here insert description of the lands as in the disposition or other deed, &c.]; in virtue of which disposition [or other deed, &c.] the said lands were resigned in the hands of the said A.B. [or "in the hands of E.F., as his commissioner duly authorised, conform to commission" (describe by date and other particulars), "as in the hands of the said A.B. himself,"] [or "in the hands of E.F., being the known agent of the said A.B., and as such duly authorised, in virtue of the Act of the Eight and Ninth years of the reign of Her Majesty Queen Victoria, chapter thirty-five, intituled 'An Act to simplify the form and diminish the expense of obtaining infeftment in heritable property in Scotland,' as in the hands of the said A.B. himself,"] *ad perpetuam remanentiam*, and to the effect that the right of property of the foresaid lands and others might be united and consolidated with the right of superiority of the same in the person of the said A.B. in all time coming. WHEREUPON this instrument is taken by [or on behalf of] the said "A.B. and C.D." in the hands of [&c., as in Schedule (J), to the end].

SCHEDULE (L).

Notarial Instrument in favour of a general Donee, or his Assignee, &c.

At there was by [or on behalf of] A.B. of Z., ^{21 and 22 Vict., c. 76, Sch. (H).} presented to me, notary-public subscribing, a disposition [specify the disposition or other deed or instrument or extract thereof, as the case may be] recorded in the [specify Register of Sasines and date of recording], by which recorded disposition [or otherwise, as the case may be] C.D. of Y. was infeft in all and whole [describe the lands or other subjects, as the case may be, as the same are described in the said disposition or other deed or instrument]; as also there was presented to me a general disposition [or other deed or conveyance or testamentary deed or writing, as the case may be, or an extract of such deed] granted by the said C.D., and dated [insert date], by which general disposition [or otherwise, as the case may be] the said C.D. disposed [or gave or granted or bequeathed, or otherwise, as the case may be] to the said A.B. and his heirs and assignees [or otherwise, as the case may be], heritably and irredeemably [or in liferent, or otherwise, as the case may be], all and sundry the whole ^{23 and 24 Vict., c. 143, Sch. (E).}

heritable estate [or otherwise, as the case may be], of which he was [or might die] possessed [or otherwise, as the case may be]. [If the deed be granted under any real burden or condition or qualification, add here, but always under the real burdens, &c.; and if the deed be granted in trust, or for specific purposes, add, but always in trust or for the uses and purposes mentioned in said general disposition, or otherwise as the case may be. If the person expeding the instrument be other than the original disponee, or grantor, or legatee under the deed, add, as also there was presented to me (specify the title or series of titles by which such person acquired right, and the nature of his right).] WHEREUPON [&c., as in Schedule (J), to the end].

SCHEDULE (M).

No. 1.

Assignment of an Unrecorded Conveyance.

21 and 22
Vict., c. 76,
Sch. (I),
No. 1.
23 and 24
Vict., c. 143,
Sch. (F),
No. 1.

I, A.B., in consideration of, &c. [or otherwise, as the case may be], hereby assign to C.D., and his heirs and assignees [or otherwise, as the case may be], the disposition [or other deed, as the case may be] granted by E.F., dated, &c., by which he conveyed the lands of X., as therein described, to me [or otherwise, as the case may be, specifying the connecting title, if any, and the nature of the right conveyed or assigned. State the term of the assignee's entry, and other particulars, if any, which ought to be specified.] IN WITNESS WHEREOF [insert a testing clause in the usual form].

NOTE.—Before being presented for registration along with the disposition or other deed and warrant of registration thereon, the assignment must be docqueted in or as nearly as may be in the form following, viz :—

“Docquetted with reference to warrant of registration on behalf of C.D., written on the said disposition [or other deed, as the case may be].”

The docquet shall be signed by the person or his agent or Agents signing the warrant.

No. 2.

Assignment of an Unrecorded Conveyance, written upon the Conveyance.

21 and 22
Vict., c. 76,
Sch. (I),
No. 2.

I, A.B., in consideration of, &c. [or otherwise, as the case may be], hereby assign to C.D., and his heirs and assignees [or otherwise, as the case may be] the foregoing disposition [or other deed, as the case may be] of the lands of X., as therein described, granted

in my favour [or otherwise, as the case may be, specifying the connecting title, and the nature of the right conveyed or assigned. State the term of the assignee's entry, and other particulars, if any, which ought to be specified]. IN WITNESS WHEREOF [insert a testing clause in the usual form].

23 and 24
Vict., c. 143,
Sch. (F),
No. 2.

SCHEDULE (N).

Notarial Instrument in favour of an Assignee to an unrecorded Conveyance to be recorded along with the Conveyance.

At there was by [or on behalf of] A.B. of Z. presented to me, notary-public subscribing, a disposition [or other deed or extract, as the case may be, specifying the nature of the deed] granted by C.D. of Y., and dated [insert date], by which disposition the said C.D. conveyed to E.F. all and whole the lands of X. as therein described, and which disposition is to be recorded along with this instrument; as also there was presented to me [specify the title or series of titles by which A.B. acquired right, and the nature of his right]. WHEREUPON, [etc., as in Schedule (J), to the end].

21 and 22
Vict., c. 76,
Sch. (K).
23 and 24
Vict., c. 143,
Sch. (G).

NOTE.—Before being presented for registration along with the disposition or other deed and warrant of registration thereon, the notarial instrument must be docketed in or as nearly as may be in the form following, viz. :—"Docketed with reference to warrant of registration on behalf of A.B., written on the said disposition [or other deed, as the case may be]." The docket shall be signed by the person or his agent or agents signing the warrant.

SCHEDULE (O).

Notarial Instrument in favour of a Trustee in a Sequestration, or of Liquidators of Joint Stock Companies.

At there was by [or on behalf of] A.B., as trustee on the sequestrated estate of C.D., [or as liquidator for winding up the, specify name of company, or partner thereof for whom liquidator acts] presented to me, notary-public subscribing, a disposition [or other deed or extract, as the case may be], [insert date], recorded in the [specify register and date of recording], by which, etc. [specify the title or series of titles by which the bankrupt, or company, or partner thereof, as the case may be, held the lands], as also there was presented to me an extract act and warrant of confirmation

21 and 22
Vict., c. 76,
Sch. (M).
23 and 24
Vict., c. 143,
Sch. (I).

in favour of the said *A.B.*, dated [insert date] [or here specify the appointment of the liquidator or liquidators, and the date thereof].
 WHEREUPON [&c., as in Schedule (J), to the end].

SCHEDULE (P).

Form of Petition of General Service.

10 and 11
 Vict., c. 47, "of Chancery,"
 Sch. (A). Unto the Honourable the Sheriff of [specify the county, or say
 of Chancery,"] the petition of *A.B.* [here name and design the
 petitioner],

Humbly sheweth,

That the late *C.D.* [here name and design the ancestor to whom service is sought] died on or about the day of and had at the time of his death his ordinary or principal domicile in the county of [or furth of Scotland, as the case may be. In cases where the deceased died upwards of ten years before the date of the petition, and the petitioner cannot ascertain the place of the domicile, say, that the late *C.D.* (here name and design the ancestor to whom service is sought) died on or about the day of , but the petitioner is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death].

That the petitioner is the eldest son [or state what other relationship or character of heir the petitioner bears] and nearest lawful heir in general of the said *C.D.* [If the service is as heir of provision, say, that the petitioner is the eldest son (or state what other relationship or character of heir the petitioner bears) and nearest lawful heir of provision in general of the said *C.D.*, under and by virtue of a deed (specify the deed of provision) executed by *E.F.*, dated the day of , or otherwise describe the deed so as to clearly identify it; or, if the service is as heir of tailzie say, that the petitioner is the eldest son (or state what other relationship, &c. the petitioner bears), and nearest and lawful heir of tailzie and provision in general of the said *C.D.*, under and by virtue of a disposition and deed of entail granted by *E.F.*, dated the day of , and recorded in the Register of Tailzies the day of , whereby the said *E.F.* conveyed the lands of *M.* to and in favour of *J.K.* (here set forth the destination or such part thereof as may be deemed necessary, or say, and the other heirs therein-mentioned; but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses, or clause authorising registration in the Register of Tailzies, as the case may be) contained in the said recorded deed of entail, and here referred to as at length set forth therein.]

May it therefore please your Lordship to serve the petitioner

nearest and lawful heir in general to the said *C.D.* [or whatever other character of heir is sought to be established here set it forth].

According to Justice, &c.

[Signed by the petitioner or his mandatory.]

SCHEDULE (Q).

Form of Petition of Special Service.

Unto the Honourable the Sheriff of [specify the county, or say, 10 and 11
"of Chancery,"] the Petition of *A.B.* [here name and design the 10 and 11
Petitioner], Vict., c. 47,
Sch. (B).

Humbly sheweth,

That the late *C.D.* [here name and design the ancestor] died on or about the day of [state the month and the year at full length], last vest and seised in [here describe or refer as in Schedule (E) or Schedule (G) to the lands with reference to which the service is sought] conform to disposition [or other deed or conveyance] dated the day of and along with warrant of registration thereon, on behalf of the said *C.D.*, recorded in the Register of Sasines (specify register) on the day of [or conform to disposition, or whatever else was the deed or conveyance on which the ancestor's infestment proceeded, here specify it], dated the day of , and to Instrument of Sasine following thereon recorded in the Register of Sasines (specify register) on the day of , [or otherwise specify the title of deceased as recorded in the Register of Sasines; and when the lands are held under a deed of entail, here insert the conditions, &c. at full length, or refer to them in or as nearly as may be in the form of Schedule (C), or, if desired, refer to them as follows] but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses [or clause authorising registration in the Register of Tailzies, as the case may be], contained in a deed of entail granted by *G.H.* [here name and design the grantor], dated the day of , in favour of *I.K.* [here set forth the destination, or such part thereof as may be deemed necessary, or say, and the heirs therein specified], and which conditions, provisions, and prohibitory, irritant, and resolute clauses [or clause authorising registration in the Register of Tailzies, as the case may be], are herein referred to as at length set forth in the said deed of entail, which is recorded in the Register of Tailzies on the day of [or, as at length set forth in the above-mentioned recorded disposition, or other deed or conveyance

in favour of the deceased, or as at length set forth in any other recorded deed or conveyance. And in every case where there are any real burdens, conditions, provisions or limitations, proper to be inserted or referred to, insert them here, or refer to them in or as nearly as may be in the form of Schedule (D)].

That the petitioner is the eldest son [*or state what other relationship or character the petitioner bears*] and nearest lawful heir in special of the said *C.D.* in the lands and others foresaid. [*If the service is as heir of provision, say, that the petitioner is the eldest son (or state what other relationship or character the petitioner bears) and nearest lawful heir of provision in special of the said C.D. in the lands and others foresaid, under and by virtue of a deed (or other conveyance) executed by E.F. dated (here describe the deed or conveyance by date or otherwise, describe it so as clearly to identify it). And if the service is as heir of entail, say, that the petitioner is the eldest son (or, state what other relationship or character the petitioner bears) and nearest and lawful heir of tailzie and provision in special of the said C.D. in the lands and others foresaid, under and by virtue of the said deed of entail.*]

[*If it is wished to embrace a service in general in the same character as that in which special service is sought, say, That the petitioner is likewise heir in general, or of provision in general, or of tailzie and provision in general, or otherwise, as the case may be, of the said C.D.*]

May it therefore please your Lordship to serve the petitioner nearest and lawful heir [*or heir of provision, or heir of tailzie and provision, or otherwise, as the case may be*] in special of the said deceased *C.D.* in the lands and others above described [*and where a general service is wished, add, and likewise nearest and lawful heir, or heir of provision, or heir of tailzie and provision in general, of the said C.D. (or whatever else is the character of heir sought to be established, here set it forth as above.) And where the service is as heir of tailzie and provision, say here, but always with and under the conditions, provisions, prohibitory, irritant, and resolute clauses (or clause authorising registration in the Register of Tailzies) above referred to (or above written); and where there are real burdens, &c., say, but always with and under the real burdens, &c., above referred to (or above written). And where there are several parcels of land or separate estates, here add, if desired, and to grant warrant to the Director of Chancery to issue separate extract decrees applicable to one or more of such parcels of lands or separate estates*].

According to Justice, &c.

[*Signed by the petitioner or his mandatory.*]

SCHEDULE (B).

Form for a General Service where it is to be limited in its effects by a Specification annexed.

No. 1.

The petition will be in the form of Schedule (P), adding at the close of the statement of the petitioner, But the petitioner desires that his general service shall be limited to the contents of the specification annexed; and adding at the close of the prayer of petition, but under limitation as aforesaid to the contents of the specification annexed.

10 and 11
Vict., c. 47,
Sch. (D),
No. 1.

No. 2.

Specification of the lands and other heritages which belonged to the deceased *C.D.* referred to in the petition for general service presented to the sheriff of
heir of

by *A.B.* as
10 and 11
Vict., c. 47,
Sch. (D),
No. 2.

[Here insert a description of the lands and other heritages intended to be included in the service, distinguishing each separate property or heritage, if there are more than one, by a separate number.]

[Signed by the petitioner or his mandatory.]

SCHEDULE (S).

Note for *A.B.* *[insert name and designation].*

The said *A.B.* humbly prays that a writ *[or charter, or precept, or other deed, as the case may be]* may be granted by Her Majesty *[or the Prince and Steward of Scotland, as the case may be]* in terms of the draft herewith lodged and marked as relative hereto.

10 and 11
Vict., c. 51,
Sch. (A).

(Signed) *C.D.* (W.S.) Agent for the said *A.B.*

SCHEDULE (T).

No. 1.

Crown Writ of Resignation.

VICTORIA, by the Grace of God, of the United Kingdom of Great

Britain and Ireland, Queen, Defender of the Faith. We, in respect of the within clause [or procuratory] of resignation, dispone to C.D. the lands contained in this disposition [or other deed or conveyance, as the case may be] in his favour [or in favour of A.B., or otherwise, as the case may be, specifying shortly the connecting title], as vassal in room and place of E.F. [here name and design last vassal in the lands], entered by [here specify the Crown charter or other Crown writ by which the last vassal was entered, and instrument thereon, if any, and date of registration in the Register of Sasines if recorded, and of recording in the Register of Crown Writs], but only in so far as consistent with the [here specify, or refer to if previously specified, a Crown charter or other Crown writ containing the tenendas and reddendo, &c.] and with our own rights. [If the reddendo is to be different from that in the Crown charter or other Crown writ specified or referred to, or if the vassal should desire, specify the reddendo here.] Given at Edinburgh the
day of in the year .

[Signed by the Director of Chancery
or his Depute or Substitute.]

Crown Charter of Resignation.

VICTORIA, &c. We do hereby give, grant, and dispoⁿe, and for ever confirm to A.B. and his heirs and assignees whomsoever [or in case there be a substitution of heirs, here insert it at full length, or refer to it as in Schedule (C)], heritably and irredeemably, al^l and whole [here insert, or refer as in Schedule (E) or Schedule (G) as the case may be, to the lands. In case there be any conditions of entail, or any real burdens, &c., proper to be inserted or referred to, insert them here immediately after the description of the lands, or refer to them as in Schedule (C) or Schedule (D) as the case may be], which lands and others formerly belonged to C.D. holden by him immediately of the Crown, in terms of [here state briefly the investiture of the last entered vassal, whether a Crown precept and sasine, or Crown charter and sasine, or other Crown writ, as recorded in the Register of Sasines, or otherwise, as the case may be], and were at the date of applying for these presents resigned by him into our hands by virtue of a procuratory [or clause] of resignation contained in a disposition [or other deed or conveyance, as the case may be] of the said lands and others granted by him in favour of the said A.B. dated [here insert the date], to be holden the said lands and others of us, and our royal successors, in free blench farm for ever, paying therefor a penny Scots yearly, of blench

duty, if asked only [*or if the lands were held formerly in ward, say here, in free blench as in room of ward, paying therefor a penny Scots yearly, as in room of the ward duties, if asked only; or if held in feu farm, say here, in feu farm, and specify the feu duty and other duties and services, or otherwise as the case may be*].

IN WITNESS WHEREOF we have ordered the seal now used for the Great Seal of Scotland to be appended hereto of this date [*if the vassal desires the seal to be appended, say here, and the same is accordingly at the request of the said A.B. appended*] at Edinburgh, the day of [*state the day, month, and year*].

[*Signed by the Director of Chancery,
or his Depute or Substitute.*]

No. 3.

Crown Writ of Confirmation.

VICTORIA, &c. We confirm this disposition [*or other deed or conveyance, as the case may be*] in favour of *C.D.*, as vassal in room and place of *E.F.* [*here name and design last vassal in the lands*], entered by [*here specify the Crown charter or other Crown writ by which the last vassal was entered, and instrument thereon, if any, and date of registration in Register of Sasines if recorded, and of recording in the Register of Crown Writs*] but only in so far as consistent with the [*here specify, or refer to if previously specified a Crown charter or other Crown writ containing the tenendas and reddendo, &c.*] and with our own rights. [*If the reddendo is to be different from that in the Crown charter or other Crown writ specified or referred to, or, if the vassal should desire, specify the reddendo here.*] Given at Edinburgh, the day of in the year

[*Signed by the Director of Chancery,
or his Depute or Substitute.*]

No. 4.

Crown Charter of Confirmation.

VICTORIA, &c. We do hereby confirm for ever, to and in favour of *A.B.* and his heirs and assignees whomsoever [*or in case there be a substitution of heirs, here insert it at full length, or refer to it as in Schedule (C) heritably and irredeemably*], all and whole [*here insert, or refer as in Schedule (E) or Schedule (G) as the case may be, to the lands to be confirmed.*] In case there be any conditions of

entail, or any real burdens, &c. proper to be inserted or referred to, insert them here immediately after the description of the lands, or refer to them as in Schedule (C) or Schedule (D) as the case may be] and a *[here specify the deed or conveyance which is to be confirmed in favour of A.B., and if the same has been recorded with warrant of registration in his favour add, with warrant of registration thereon in favour of the said A.B.]* recorded in the *[here describe the register in which the said deed or conveyance is recorded]*, on the day of *(or of whatever other date the said deed or conveyance, or recording thereof may be)*, in so far as they relate to the lands and others hereby confirmed, to be holden the said lands and others of us, &c. (as in No. 2 of this Schedule).

IN WITNESS WHEREOF, &c. (as in No. 2 of this Schedule).

GENERAL NOTE TO SCHEDULE (T).—When the writs and Charters Nos. 1, 2, 3, and 4 are to be granted by or on behalf of the Prince and Steward of Scotland, they will be in similar form, but will run in name of the “Prince and Steward of Scotland,” without adding His Highness’ other titles; and the lands, instead of being described as holding of Her Majesty and her Royal Successors, will, where it is necessary by the form of the writ or charter to specify the holding, be described as holding of the “Prince and Steward of Scotland,” and the seal referred to in the testing clause will be the Prince’s seal.

SCHEDULE (U).

No. 1.

Crown Writ of Clare Constat.

21 and 22
Vict., c. 76,
Sch. (G). VICTORIA, &c. Whereas by decree of general service [or of special service, as the case may be] of A.B. *[here insert the name and designation of the heir]*, dated *[here insert the date of the decree]*, and recorded in Chancery *[here insert the date of registration]*, and other authentic instruments and documents, it clearly appears that C.D. *[here insert the name and designation of the ancestor]* died last vest and seised as of fee in *[here describe the lands, or refer to them as in Schedule (E) or Schedule (G) as the case may be]*; and that in virtue of *[here describe the Crown charter or Crown precept and sasine, or recorded Crown charter or Crown precept, or other Crown writ or writs forming the last investiture, by dates, and dates of registration in the Register of Sasines and Register of Crown Writs, and when the lands are held under a deed of entail, here insert the destination, conditions, &c., at full length, or refer to them in or as nearly as may be in the form of Schedule (C), or if desired refer to them as follows, but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (or clause*

authorising registration in the Register of Tailzies, *as the case may be*) contained in a deed of entail granted by *G.H.* (*here name and design the grantor*) dated the day of in favour of *I.K.* [*here set forth the destination or such part thereof as may be deemed necessary, or say, and the heirs therein specified*]; and which conditions, provisions, and prohibitory, irritant, and resolute clauses [*or clause authorising registration in the Register of Tailzies, as the case may be*] are herein referred to as at length set forth in the said deed of entail which is recorded in the Register of Tailzies on the day of [*or as at length set forth in the above-mentioned recorded charter, &c., forming the last investiture, or as at length set forth in any other recorded deed or conveyance. And in every case where there are real burdens, conditions, provisions, or limitations proper to be inserted or referred to, insert them here or refer to them in or as nearly as may be in the form of Schedule (D)*]: And that the said *A.B.* is eldest son and nearest and lawful heir of the said *C.D.* [*or whatever relationship and character of heir the party holds, here state it*]. Therefore we hereby declare the said *A.B.* to be the heir entitled to succeed to the said *C.D.* in the said lands to be holden of us and our royal successors in manner and for payment of the duties specified in the [*here specify, or refer to, if previously specified, a Crown charter or other Crown writ containing the tenendas and reddendo. If the reddendo is different from that in the Crown charter or other Crown writ specified or referred to, or if the vassal should desire, specify the reddendo here*]. Given at Edinburgh, the day of in the year

[Signed by the Director of Chancery
or his Depute or Substitute.]

No. 2.

Precept from Chancery.

VICTORIA, &c. Whereas by decree of general service [*or of special service, as the case may be*] of *A.B.* [*here insert the name and designation of the heir*], dated [*here insert the date of the decree*], and recorded in Chancery [*here insert the date of registration*], and other authentic instruments and documents, it clearly appears that *C.D.* [*here insert the name and designation of the ancestor*] died last vest and seised as of fee in, &c. [*as in No. 1 of this Schedule down to and including the statement of the relationship and character of heir which the party holds, then say*] and that the said lands and others are holden of us and our royal successors [*here state the tenure, blench, feu, or other*], for payment [*here state the reddendo from the last charter or other writ, as the case may be*]. Therefore we hereby desire any notary-public to whom these presents may

10 and 11
Vict., c. 51,
Sch. (B).

be presented to give to the said *A.B.* as heir foresaid sasine of the lands and others before described; [*if there are conditions of entail, &c., or real burdens, here add*] but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses [*or clause authorising registration in the Register of Tailzies, as the case may be, or with and under the burdens, conditions, provisions, and limitations, as the case may be, above specified (or referred to) as the case may be.*] Given at Edinburgh, the day of in the year

[*Signed by the Director of Chancery, or his Depute or Substitute.*]

GENERAL NOTE TO SCHEDULE (U).—When the writ or precept is to be granted by or on behalf of the Prince and Steward of Scotland, they will be in similar form, but will run in name of the Prince and Steward of Scotland without adding His Highness' other titles; and the lands, instead of being described as holding of Her Majesty and Her Royal Successors, will be described as holding of the Prince and Steward of Scotland.

SCHEDULE (V).

No. 1.

Writ of Confirmation by Subject-Superior.

21 and 22
Vict., c. 76,
Sch. (E).

I, *A.B.* [*here insert name and designation of superior*], hereby confirm this disposition [*or other deed or conveyance, as the case may be*] in favour of *C.D.*, as vassal in room and place of *E.F.* [*here name and design last vassal in the lands*] entered by [*here specify the charter or other writ by which the last vassal was entered, instrument thereon if any, and date of registration in the Register of Sasines if recorded*], but only in so far as consistent with the [*here specify, or refer to if previously specified, a charter or other writ containing the tenendas and reddendo, &c.*], and with my own rights. [*If the reddendo is to be different from that in the charter or other writ specified or referred to, or if the vassal should desire, specify the reddendo here.*] IN WITNESS WHEREOF [*insert a testing clause in usual form*].

No. 2.

Charter of Confirmation by Subject-Superior.

10 and 11
Vict., c. 48,
Sch. (D).

I, *A.B.*, immediate lawful superior of the lands and others after mentioned, do hereby confirm for ever to and in favour of

C.D. [here name the party in whose favour the charter is granted], and his heirs and assignees whomsoever, heritably and irredeemably, all and whole [here insert, or refer, as in Schedule (E) or Schedule (G), as the case may be, to the lands to be confirmed, and if under conditions of entail or real burdens, &c., insert them or refer to them as in Schedule (C) or Schedule (D), as the case may be], and [here specify the deed or conveyance which is to be confirmed in favour of *C.D.*, and if the same has been recorded with warrant of registration in his favour, add] with warrant of registration thereon in favour of the said *C.D.*, recorded in the [here describe the register in which the said deed or conveyance is recorded] on the day of _____, or of whatever other date or tenor the said disposition [or other deed or conveyance] may be, and that in so far as relates to the lands and others hereby confirmed, to be holden the said lands and others immediately of me and my successors, superiors thereof, in free blench farm [or in feu farm, as the case may be] for ever, paying therefor [here insert the reddendo]. And I consent to the registration hereof for preservation. IN WITNESS WHEREOF [insert a testing clause in usual form].

No. 3.

Writ of Resignation by Subject-Superior.

I, *A.B.* [here insert name and designation of superior], in 21 and 22 respect of the within clause [or procuratory] of resignation, dis- ^{Vict., c. 76,} ^{Sch. (F).} pone to *C.D.* the lands contained in this disposition [or other deed or conveyance, as the case may be], in his favour [or in favour of *G.H.*, or otherwise, as the case may be, specifying shortly the connecting title], as vassal in room and place of *E.F.* [here name and design last vassal in the lands] entered by [here specify the charter or other writ by which the last vassal was entered, and instrument thereon, if any, and date of registration in Register of Sasines if recorded] but only in so far as consistent with the [here specify or refer to, if previously specified, a charter or other writ containing the tenendas and reddendo, &c.] and with my own rights. [If the reddendo is to be different from that in the charter or other writ specified or referred to, or if the vassal should desire, specify the reddendo here.] IN WITNESS WHEREOF [insert a testing clause in usual form].

No. 4.

Charter of Resignation by a Subject-Superior.

I, *L.M.*, immediate lawful superior of the lands and others [New.]

after mentioned, do hereby give, grant, dispoⁿe, and for ever confirm to *A.B.* and his heirs and assignees whomsoever [*or in case there be a substitution of heirs, here insert it at full length or refer to it as in Schedule (C)*], heritably and irredeemably, all and whole [*here insert or refer as in Schedule (E) or Schedule (G), as the case may be, to the lands, and if held under conditions of entail or real burdens, &c., insert them or refer to them as in Schedule (C) or Schedule (D), as the case may be*], which lands and others formerly belonged to *C.D.*, holden by him of me as his immediate lawful superior thereof, in terms of [*here state briefly the investiture of the last entered vassal*], and have been resigned by him into my hands by virtue of a procuratory [*or clause*] of resignation contained in a disposition [*or clause*] of resignation contained in a disposition [*or other deed or conveyance as the case may be*] of the said lands and others granted by him in favour of the said *A.B.*, dated [*here insert the date*]; to be holden the said lands and others of me, my heirs and successors, in free blench farm [*or in feu farm, as the case may be*] for ever, paying therefor [*here insert the reddendo*]; and I consent to the registration hereof for preservation. IN WITNESS WHEREOF [*insert a testing clause in usual form*].

SCHEDULE (W).

No. 1.

Writ of Clare Constat by a Subject-Superior.

21 and 22
Vict., c. 76,
Sch. (G). I, *A.B.*, [*insert name and designation of superior*]: Whereas, by decree of general service [*or of special service, as the case may be*] of *C.D.* [*here insert the name and designation of the heir*], dated [*here insert the date of the decree*], and recorded in Chancery [*here insert the date of registration*], and other authentic instruments and documents [*or by authentic instruments and documents*], it clearly appears that *E.F.* [*here insert the name and designation of the ancestor*] died last vest and seised as of fee in [*here describe the lands, or refer to them as in Schedule (E) or Schedule (G), as the case may be*] and that in virtue of [*here describe the charter or precept and sasine, or recorded charter or precept, or other writ or other deed or conveyance forming the last investiture, by dates, and dates of registration in the Register of Sasines, and where the lands are held under a deed of entail here insert the destination, conditions, &c. at full length, or refer to them in or as nearly as may be in the form of Schedule (C), or if desired refer to them as follows, but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (or clause authorising registration in the Regis-*

ter of Tailzies, *as the case may be*) contained in a deed of entail granted by *G.H.* (*here name and design the grantor*) dated the day of _____ in favour of *I.K.* (*here set forth the destination or such part thereof as may be deemed necessary, or say, and the heirs therein specified*) and which conditions, provisions, and prohibitory, irritant, and resolute clauses (*or clause authorising registration in the Register of Tailzies, as the case may be*) are herein referred to as at length set forth in the said deed of entail, which is recorded in the Register of Tailzies on the day of _____ (*or as at length set forth in the above-mentioned recorded charter, &c. forming the last investiture, or as at length set forth in any other recorded deed or conveyance. And in every case where there are any real burdens, conditions, provisions, or limitations proper to be inserted or referred to, insert them here, or refer to them in or as nearly as may be in the form of Schedule (D)*); and that the said *C.D.* [*or if the heir has not been previously named here say, and that C.D. (here insert his name and designation) is eldest son and nearest lawful heir of the said E.F., or whatever relationship and character of heir the party holds, here state it*]. Therefore, I hereby declare the said *C.D.* to be the heir entitled to succeed to the said *E.F.*, in the said lands, to be holden of me and my successors in manner and for payment of the duties specified in the [*here specify or refer to if previously specified a charter or other writ containing the tenendas and reddendo. If the reddendo is different from that in the charter or other writ specified or referred to, or if the vassal should desire, specify the reddendo here*]. IN WITNESS WHEREOF [*insert a testing clause in usual form*].

No. 2.

Precept of Clare Constat by a Subject-Superior.

I, *A.B.* [*here insert name and designation of superior*]: Whereas, &c. [*as in No. 1 of this Schedule*] it clearly appears that *E.F.* [*here insert the name and designation of the ancestor*] died last vest and seized as of fee in, &c. [*as in No. 1 of this Schedule down to and including the statement of the relationship and character of heir which the party holds*]; and that the said lands and others are holden of me and my successors, as superiors thereof, in free blench farm [*or feu farm, as the case may be*]; for ever, for payment of [*here specify the reddendo*]. Therefore I desire any notary-public to whom these presents may be presented to give to the said *C.D.*, as heir aforesaid, sasine of the lands and others above described. [*If there are conditions of entail, &c., or other burdens or qualifications, here add, but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses, (or clause*

[*New.*]

authorising registration in the Register of Tailzies, or with and under the real burdens, conditions, provisions, and limitations, as *(the case may be)* above specified, or referred to, as *(the case may be)*.]
IN WITNESS WHEREOF [*insert a testing clause in usual form*].

No. 3.

Writ of Clare Constat in Burgage Subjects.

23 and 24
Vict., c. 143,
Sch. (D). We, the provost and bailies of the burgh of [*insert name*], being the magistrates of said burgh, acting under and in terms of "The Titles to Land Consolidation (Scotland) Act 1868": Whereas it clearly appears that *C.D.* [*insert name and designation of the ancestor*] died last vest and seised as of fee in, &c. [*as in No. 1 of this Schedule, down to and including the statement of the relationship and character of heir which the party holds*]. Therefore, we hereby declare the said *A.B.* to have right to the said lands as heir foresaid. IN WITNESS WHEREOF [*to be signed by the provost or acting chief magistrate for the time, and the town clerk (or by one of the town clerks where there are more than one), and tested in usual form*].

SCHEDULE (X).

No. 1.

Petition to the Lord Ordinary for Forfeiture of Superiority where Reddendo does not exceed Five Pounds.

10 and 11
Vict., c. 48,
Sch. (E),
No. 1. Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A.B.* humbly sheweth, that by disposition dated the granted by *C.D.* of the said *C.D.* disposed to the petitioner all and whole [*here describe the subjects as in the disposition*] to be held of the disponent's superior, with warrants of resignation and infeftment:

That the petitioner's author, the said *C.D.*, held the said lands and others, of and under the late *E.F.* as his immediate lawful superior, for an annual reddendo not exceeding in value or amount five pounds sterling; that *G.H.* is the eldest son [*or whatever other relation he is*] and apparent heir of the said *E.F.*, and as such has right to the superiority of the said lands and others, but he has not made up a feudal title thereto, and is therefore not in a situation to grant entry to the petitioner, although demanded

from him; and the petitioner now applies to your Lordship for redress in terms of the Act [*here mention this Act*], and produces the above-mentioned disposition in his favour.

May it therefore please your Lordship, in terms of the said Act, to grant warrant for serving this petition on the said *G.H.* personally, or at his dwelling-place [*here add a prayer for edictal citation in the usual form if the party is furth of Scotland*], and to ordain him, within thirty days of the date of such service [*or within sixty days if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered and infeft in the said lands and others, and to enter the petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to show cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the said superiority; and in the event of the said *G.H.* failing so to complete his title and grant entry to the petitioner, or to show reasonable cause why he delays or refuses so to do, to find and declare that the said *G.H.* has forfeited and amitted all right to the said superiority, and that the petitioner and his heirs and successors are entitled to hold the said lands and others in all time coming as vassals immediately of and under the next over-superior by the tenure and for the reddendo by and for which the forfeited superiority was held.

According to Justice, &c.

NOTE.—The above form is applicable to the case where the petitioner requires a charter or writ of resignation. In other cases the form must be varied, so far as necessary, to suit the circumstances.

No. 2.

Interlocutor by Lord Ordinary on above Petition.

The Lord Ordinary grants warrant to messengers-at-arms to serve the said petition and this deliverance on the said *G.H.* as prayed for, and ordains the said *G.H.*, within thirty days [*or sixty days, as the case may be*] after the date of such service, to procure himself entered and infeft in the lands and others described in the petition, and to enter the petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to show cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the said superiority in terms of the said Act.

No. 3.

Decree by Lord Ordinary on above Petition.

10 and 11
Vict., c. 48,
Sch. (E),
No. 3.

The Lord Ordinary having resumed consideration of the said petition, with the execution thereon, now expired, in respect the said *G.H.* has not shown cause for delaying or refusing to complete his title to the superiority, and to grant an entry to the petitioner, finds and declares that the said *G.H.* has forfeited and amitted all right to the said superiority, and that the petitioner and his heirs and successors are entitled to hold the lands and others described in the petition in all time coming as vassals immediately of and under the next over-superior by the tenure and for the reddendo by and for which the said forfeited superiority was held; grants warrant to the petitioner and his foresaids to apply for and obtain an entry in the said lands and others from the said over-superior, in the terms foresaid, and decerns and ordains the decree to be extracted hereon to be recorded in the Register of Sasines.

SCHEDULE (Y).

No. 1.

Petition to the Lord Ordinary for Forfeiture of Feu Duties under or above Five Pounds.

10 and 11
Vict., c. 48,
Sch. (F),
No. 1.

Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A.B.*, humbly sheweth, that by disposition dated the day of granted by *C.D.* of the said *C.D.* disposed to the petitioner all and whole [*here describe the subjects as in the disposition*] to be held of the disponent's superior, with warrants of resignation and sasine.

That the petitioner's author, the said *C.D.*, held the said lands and others of and under the late *E.F.* as his immediate lawful superior; that *G.H.* is the eldest son [*or whatever other relation he is*] and apparent heir of the said *E.F.*, and as such has right to the superiority of the said lands and others, but he has not made up a feudal title thereto, and is therefore not in a situation to grant entry to the petitioner, although demanded from him. The petitioner now applies to your Lordship for redress in terms of the Act [*here mention this Act*], and produces the above mentioned disposition in his favour.

May it therefore please your Lordship, in terms of the said Act to grant warrant for serving this petition on the said *G.H.* personally, or at his dwelling place [*here add a prayer for edictal citation in the usual form if the party is furth of Scotland*], and to ordain him, within thirty days after the date

of such service [*or within sixty days, if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered and infeft in the said lands and others, and to enter the petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to show cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the duties and casualties payable on the entry of the petitioner, and that the petitioner shall be entitled to retain from him and his successors, as immediate superiors, the yearly feu duties and whole other prestations, until fully paid and indemnified for all the expenses of this petition and procedure to follow hereon, and for all the expenses of completing the petitioner's title in terms of the said Act; and thereafter, on resuming consideration of this petition, with or without answers, to find and declare that the said *G.H.* has forfeited and amitted all right to the dues and casualties payable on the entry of the petitioner, and that the petitioner is entitled to retain from him and his successors, as immediate superiors, the yearly feu duties and whole other prestations until fully paid and indemnified for all the expenses of this petition and of the procedure to follow hereon, and for all the expenses of completing the petitioner's title in terms of the said Act; and also to grant warrant to the petitioner to apply for and obtain an entry in the said lands and others from the Crown [*or Prince of Scotland, or I.K., the mediate over-superior*], as acting in the vice of the said *G.H.*, and to authorise decree to the above effect to be extracted ad interim; and thereafter, upon the completion of the petitioner's title by an entry from the Crown [*or Prince of Scotland, or such mediate over-superior*] as aforesaid, to remit the accounts of the expenses of this petition and procedure hereon, and of the expenses of completing the petitioner's title, to the auditor to tax the same, and to report and to modify the amount of the said expenses and to decern for retention of the amount thereof as aforesaid (*if the parties have agreed to or are in treaty for a relinquishment add*, or in the event of the said *G.H.* relinquishing the superiority, to find, decern, and declare the same to be extinguished in manner and to the effect expressed in the Statute), or to do otherwise in the premises as to your Lordship shall seem just.

According to justice, &c.

NOTE.—The above form is applicable to the case where the petitioner requires a writ of registration. (a) In other cases the form must be varied, so far as necessary, to suit the circumstances.

(a) "Registration" should be "Resignation."

No. 2.

Interlocutor by Lord Ordinary in above Petition.

10 and 11
Vict., c. 48,
Sch. (F),
No. 2.

The Lord Ordinary grants warrant to messengers-at-arms to serve the said petition and this deliverance on the said *G.H.* as prayed for, and ordains the said *G.H.* within thirty days [*or sixty days, as the case may be*] after the date of such service, to procure himself entered and infeft in the lands and others described in the petition, and to enter the petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to show cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the duties and casualties payable on the petitioner's entry, and that the petitioner shall be entitled to retain from him and his successors, as immediate superiors, the yearly feu duties and the whole other prestations, until fully paid and indemnified for the expenses of the petition and procedure thereon, and for all the expenses of completing the petitioner's title in terms of the said Act.

No. 3.

Decree by Lord Ordinary in the above Petition.

10 and 11
Vict., c. 48,
Sch. (F),
No. 3.

The Lord Ordinary having resumed consideration of the said petition, with the execution thereon, now expired, in respect the said *G.H.* has not shown cause for delaying or refusing to complete his title to the superiority, and to grant an entry to the petitioner, finds and declares that the said *G.H.* has forfeited and amitted all right to the duties and casualties payable on the entry of the petitioner, and that the petitioner is entitled to retain from him and his successors, as immediate superiors, the yearly feu-duties and whole other prestations, until fully paid and indemnified for all the expenses of the said petition and procedure thereon, and for all the expenses of completing the petitioner's title; grants warrant to the petitioner to apply for and obtain an entry in the lands and others described in the petition from the Crown [*or Prince of Scotland, or, I.K., the mediate over-superior*], as acting in vice of the said *G.H.*, and decerns and allows this decree to go out and be extracted *ad interim*; and, on the petitioner's title being completed, appoints accounts of the expenses of the petition and procedure thereon, and of completing the title, to be lodged, and remits the same, when lodged, to the auditor to tax and report.

No. 4.

Finding for Expenses in above Petition.

The Lord Ordinary approves of the auditor's report on the petitioner's account of expenses, modifies the same to £ sterling, and decerns against the said *G.H.* for payment thereof to the petitioner by retention, as prayed for [or personally against the said *G.H.*, as the case may be].

10 and 11
Vict., c. 48,
Sch. (F),
No. 4.

SCHEDULE (Z).

No. 1.

Writ of Confirmation on Decree of Forfeiture in case of Feu Duties above Five Pounds.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. We confirm this disposition [or other deed or conveyance, as the case may be] in favour of *A.B.*; to be holden the said lands and others of the Crown as in room of *G.H.* [here name and design the person against whom decree has been obtained] the eldest son [or whatever other relation he may be] of *E.F.* [here name and design the person last infeft in the superiority], who was last infeft in the immediate superiority of the said lands, in respect that the said *G.H.* having failed to complete his title to the said superiority, and to grant an entry to the said *A.B.*, the said *A.B.*, in virtue of an Act [here set forth the title of this Act], obtained a decree by the Lord Ordinary on the Bills, dated the , granting warrant to the said *A.B.* to apply for and obtain an entry in the said lands and others from the Crown, as acting in vice of the said *G.H.*, and that while and so long as the said *G.H.* and his successors, the immediate superiors thereof, shall remain unentered, and thereafter until a new entry shall become requisite, and that by the same tenure by which the same were or might have been holden of the said *G.H.*; and for payment to him and his successors, who are properly immediate lawful superiors of the said lands and others, of the annual duties and casualties heretofore payable, but only upon the completion of their title in the superiority. Given at Edinburgh, the day of in the year .

10 and 11
Vict., c. 48,
Sch. (H),
No. 1.
21 and 22
Vict., c. 76,
Sch. (E).

[Signed by the Director of Chancery,
or his Depute or Substitute.]

No. 2.

Writ of Resignation on Decree of Forfeiture in case of Feu Duties above Five Pounds.

10 and 11
Vict., c. 48,
Sch. (II),
No. 2.
21 and 22.
Vict., c. 76,
Sch. (F).

VICTORIA, &c. We do hereby dispoise to A.B. [*here name the dispoinee*] the lands contained in this disposition [*or other deed of conveyance, as the case may be*] in his favour, which lands formerly belonged to C.D. [*here name and design the disponer*], holden by him immediately of E.F. [*here name and design the person who died last in feist in the superiority*], in terms of [*here state the investiture of the disponer*], and now of the Crown as in vice of the immediate superior thereof, in respect that the said E.F. being dead, and G.H., his eldest son [*or whatever other relation he may be*] and heir apparent, who is in right of the superiority, having failed to complete his title thereto, and to grant an entry to the said A.B., the said A.B., in virtue of an Act [*here set forth the title of this Act*], obtained a decree by the Lord Ordinary on the Bills, dated the day of , granting warrant to the said A.B. to apply for and obtain an entry in the said lands and others from the Crown as acting in vice of the said G.H., and which lands and others have been resigned into our hands as in vice of the said G.H., by virtue of the clause [*or procuratory*] of resignation contained in this disposition [*or other deed or conveyance, as the case may be*]; to be holden the said lands and others of the Crown as in room of the said G.H., who is properly the immediate lawful superior thereof, while and so long as he and his successors, the immediate superiors thereof, shall remain unentered, and thereafter until a new entry shall become requisite, and that by the same tenure by which the same were or might have been holden of the said G.H.; and for payment to him and his successors, who are properly the immediate lawful superiors of the said lands and others, of the annual duties and casualties heretofore payable, but only upon the completion of their title in the superiority. Given at Edinburgh the day of in the year .

[*Signed by the Director of Chancery,
or his Depute or Substitute.*]

NOTE.—The writ in favour of an adjudger will be in similar terms, but under the proper modification; and a writ of *clare constat* from Chancery in favour of the vassal's heir, who has obtained decree against the unentered heir apparent of his superior, will be in similar terms as applied to the style of such a writ; and if the writ is by the Prince or the mediate over-superior, the necessary alterations will be made.

SCHEDULE (AA).

No. 1.

*Writ of Confirmation proceeding on a Decree of
Forfeiture or Relinquishment.*

I, *L.M.*, immediate lawful superior of the lands and others ^{10 and 11} contained in the within disposition [*or other deed or conveyance, Vict., c. 48,* as the case may be], in virtue of a decree of forfeiture [*or relin-* Sch. (I), quishment, as the case may be] against *G.H.*, heir apparent of my No. 1, immediate vassal last infeft in the said lands and others, pro- 21 and 22 nounced by Lord , Ordinary on the Bills, upon the Vict., c. 76, day of in a petition at the instance of Sch. (E).
A.B. [*here design the disponee*], do hereby confirm this disposition [*or other deed or conveyance, as the case may be*] in favour of the said *A.B.*; to be holden, the said lands and others, by the said *A.B.* and his foreshaids, in all time hereafter, immediately of me and my successors, as superiors thereof, in free blench farm [*or in feu farm, as the case may be, according to the tenure by which the forfeited or relinquished superiority was held*] for ever, paying therefor [*here specify the reddendo for which the forfeited or relinquished superiority was held*]. In WITNESS WHEREOF [*insert a testing clause in the usual form*].

No. 2.

*Writ of Resignation proceeding on a Decree of
Forfeiture or Relinquishment.*

I, *L.M.*, immediate lawful superior of the lands and others ^{10 and 11} contained in the within disposition [*or other deed of conveyance, as Vict., c. 48,* the case may be], in virtue of a decree of forfeiture (*or relinquish-* Sch. (I), ment, as the case may be] against *G.H.*, heir apparent of my No. 2, immediate vassal last infeft in the said lands and others, pronounced by Lord , Ordinary on the Bills, upon the day of in a petition at the instance of *A.B.* [*here design the disponee*], do hereby dispoise to the said *A.B.* the lands contained in this disposition [*or other deed or conveyance, as the case may be*] in his favour [*or in favour of C.D., or otherwise, as the case may be, specifying shortly the connecting title*]; which lands formerly belonged to [*here insert the designation of the dispoiser*], holden by him under my immediate vassal, and now of myself, in terms of [*here state briefly the investiture of the last entered vassal*], and have been resigned by the said *A.B.* in my hands, as now coming in place of his immediate superior, by

21 and 22
Vict., c. 76,
Sch. (F).

virtue of the clause [*or procuratory*] of resignation contained in the within disposition [*or other deed or conveyance, as the case may be*]; to be holden the said lands immediately of me and my successors, as superiors thereof, in free blench farm [*or in feu farm, as the case may be, according to the tenure by which the forfeited or relinquished superiority was held*] for ever, paying therefor [*here specify the reddendo for which the forfeited or relinquished superiority was held*]. IN WITNESS WHEREOF [*insert a testing clause in the usual form*].

No. 3.

Writ of Clare Constat proceeding on a Decree of Forfeiture or Relinquishment.

10 and 11
Vict., c. 48,
Sch. (1).
No. 3.
21 and 22
Vict., c. 76,
Sch. (G).

I, A.B., immediate lawful superior of the lands and others after mentioned, in virtue of a decree of forfeiture [*or relinquishment, as the case may be*] against G.H., heir apparent of my immediate vassal last infeft in the said lands and others, pronounced by Lord _____; Ordinary on the Bills, dated the _____ day of _____, in a petition at the instance of C.D. [*here name and design the heir in whose favour the writ is to be granted*]: Whereas by authentic instruments and documents it clearly appears that E.F. [*here name and design the ancestor*] died last vest and seised as of fee in, &c. [*as in Schedule (W), No. 1, down to and including the statement of the relationship and character of heir which the party holds*]; and that the said lands and others are, in virtue of the said decree, now holden of me and my successors, as superiors thereof, in free blench farm [*or feu farm, as the case may be, according to the tenure by which the forfeited or relinquished superiority was held*] for ever, for payment of [*here specify the reddendo for which the forfeited or relinquished superiority was held*]. Therefore, I hereby declare the said C.D. to be the heir entitled to succeed to the said E.F. in the said lands to be holden of me and my foresaids for payment of the said duties. IN WITNESS WHEREOF [*insert a testing clause in the usual form*].

NOTE.—Where the next superior is the Crown, writs by the Crown will be granted in similar terms to the above, but adapted to the forms of Chancery.

SCHEDULE (BB).

No. 1.

Form of Minute of Relinquishment of Superiority by Apparent Heir.

Minute of Relinquishment by _____ as heir apparent of _____ in the lands aftermentioned in the petition at the instance of [here name and describe the petitioner].

I, A.B., eldest lawful son [or whatever relation he may be] and nearest lawful heir apparent of C.D., the person last infeft in the superiority of the lands of [here describe the lands fully], which right of superiority is holden immediately of and under the Crown [or other over-superior, as the case may be], do absolutely and gratuitously [or if any price paid, say, in consideration of £ _____ sterling to be paid to me] relinquish and renounce the superiority of the said lands to which I hold right as heir apparent aforesaid in favour of the petitioner and his successors in the said lands. IN WITNESS WHEREOF, &c. [To be signed by the party, or by his mandatory or agent duly authorised in writing, and duly tested.]

10 and 11
Vict., c. 48,
Sch. (G),
No. 1.

No. 2.

Minute of Acceptance of above Relinquishment.

I accept relinquishment in terms of this minute. [To be signed by the petitioner, or his counsel or agent.]

10 and 11
Vict., c. 48,
Sch. (G),
No. 2.

No. 3.

Decree of Lord Ordinary following on the above Minutes.

The Lord Ordinary interpones his authority to the minute of relinquishment lodged by the respondent, and decerns and declares the right of superiority thereby relinquished to be extinguished to the effect of giving right to the petitioner and his successors to hold the lands and others described in the petition, immediately of and under the party who is superior of the feu now given up and extinguished, and by the tenure and for the reddendo by and for which the relinquished feu was held, and decerns and appoints the decree to be extracted hereon to be recorded in the Register of Sasines.

10 and 11
Vict., c. 48,
Sch. (G),
No. 3.

SCHEDULE (CC).

No. 1.

Deed of Relinquishment of Superiority.

21 and 22
Vict., c. 76,
Sch. (N),
No. 1.

I, *A.B.*, immediate lawful superior of all and whole [*here describe the lands*], do hereby absolutely and gratuitously [*or in consideration of the sum of* pounds paid to me, *or, if the superiority is entailed*, consigned in the (*specify bank*) subject to the orders of the Court of Session] relinquish and renounce my right of superiority of the said lands in favour of *C.D.*, my immediate vassal, and his successors therein, and declare that the said lands shall no longer be held of me as superior, but shall be held of my immediate lawful superior in all time to come. IN WITNESS WHEREOF [*insert testing clause in the usual form*].

No. 2.

Acceptance by Vassal written on Deed of Relinquishment.

Do., No. 2.

I, *C.D.*, the immediate vassal in the lands described in this deed, accept the relinquishment of the superiority of the said lands. IN WITNESS WHEREOF [*insert a testing clause in the usual form*].

No. 3.

Crown Writ of Investiture written on Deed of Relinquishment.

Do., No. 3.

VICTORIA, &c. We, lawful superior of the lands contained in this deed, accept and receive *C.D.*, and his heirs and successors whomsoever [*or otherwise, according to the destination contained in the title to the lands*], in place of *E.F.*, and his heirs and successors in virtue of the above deed of relinquishment, and acceptance thereof; to be holden the said lands by the said *C.D.* and his foresaids of us, &c. [*specify the tenendas and reddendo contained in the titles of the relinquished superiority; also insert or refer to the conditions and limitations, if any, under which the lands are held by the vassal, as in No. 1, Schedule (U)*]. Given at Edinburgh, the
day of in the year

[*Signed by the Director of Chancery,
or his Depute or Substitute.*]

NOTE.—If the writ is by the Prince or the mediate over-superior the necessary alteration will be made.

SCHEDULE (DD).

Form of Minute excluding Executors in an Heritable Security.

I, *A.B.* [*here name and design the creditor*], hereby exclude [New.] executors from the bond and disposition in security [*or other security, here specify it by date, &c., and if recorded in register of sasines specify the date of such recording, or if followed by an instrument so recorded specify the date of recording such instrument, and if the security has not been completed by infestment, here say, the* within bond and disposition in security (*or assignation, or other deed or conveyance thereof, as the case may be*)]. IN WITNESS WHEREOF, &c. [*insert testing clause in usual form*].

SCHEDULE (EE).

Form of a Minute of Removal of the Exclusion of Executors in an Heritable Security.

I, *A.B.* [*here name and design the creditor*], hereby remove the exclusion of executors contained in [*or indorsed on*] the bond and disposition in security [*or assignation, or otherwise as the case may be, specifying the same as in Schedule (DD) or contained in the minute of exclusion of executors (specify date of minute and of recording the same in the register of sasines)*]. IN WITNESS WHEREOF, &c. [*insert a testing clause in usual form*].

SCHEDULE (FF).

No. 1.

Form of a Bond and Disposition in Security.

I, *A.B.* [*here name and design the grantor*], grant me to have 10 and 11 instantly borrowed and received from *C.D.* [*here name and design the creditor*], the sum of [*insert the sum*] sterling; which sum I bind myself, and my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said *C.D.*, his executors [*or his heirs, excluding executors*] or assignees whomsoever, at the term of [*here insert the date and place of payment*], with a fifth part more of liquidate penalty in case of failure, and the interest of said principal sum at the rate of per centum per annum from the date hereof to the said

Vict., c. 50,
Sch. (A).

term of payment, and half-yearly, termly, and proportionally thereafter during the not-payment of the same, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at the term of next, for the interest due preceding that date, and the next term's payment thereof at following, and so forth half-yearly, termly, and proportionally thereafter during the not-payment of the principal sum, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof. And in security of the personal obligation before written, I dispoⁿe to and in favour of the said C.D. and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a sale by virtue hereof, all and whole [here describe or refer as in Schedule (E) or Schedule (G) to the lands], (a) and that in real security to the said C.D. and his foresaids of the whole sums of money above written, principal, interest, and penalties; and I assign the rents; and I assign the writs; and I grant warrandice; and I reserve power of redemption; and I oblige myself for the expenses of assigning and discharging this security; and on default in payment I grant power of sale; and I consent to registration for preservation and execution. IN WITNESS WHEREOF, &c. [insert a testing clause in usual form].

- (a) If the lands are held under any real burdens, conditions, provisions, or limitations, insert them here or refer to them in or as nearly as the circumstances may require in the form of Schedule (D).

No. 2.

Form of Schedule of Intimation, Requisition, and Protest.

[New.] I, A.B. [design him], procurator for C.D. [design creditor in right of the security], in whose favour the bond and disposition in security after mentioned was granted [or, if he is not the original creditor, now in right of the bond and disposition in security after mentioned], do hereby give notice to you, E.F. [design debtor under the security], that payment is now required of the sum of £ , being the principal sum due under the bond and disposition in security, dated and recorded , granted by you E.F. [or by G.H.] in favour of the said C.D. [or original creditor; if C.D. is not the original creditor, add, to which C.D. has now right by various transmissions, but these transmissions need not be particularly specified], and of the sum of £ , being the interest due at present on the said principal sum, with such further sum of interest as shall accrue on the said principal sum till paid. And I further give you notice, that if at the expiry of the period of three months from the date hereof the sums,

principal and interest, and liquidate penalty incurred and to be incurred, of which payment is now required, shall not be paid in terms of the said bond and disposition in security, then the said *C.D.*, or the person or persons who may then be in right of the said bond and disposition in security, may proceed to sell the lands and others [or subjects] thereby conveyed, in the manner provided by the "Titles to Land Consolidation (Scotland) Act, 1868," and with all powers and privileges conferred on or competent to creditors under bonds and dispositions in security by that Act. This I do at _____ on the _____ day of _____ before and in presence of *L.M.*, notary-public, and *N.O.* and *P.Q.* [*design them*], witnesses to the premises called and required, and hereto with me subscribing.

(Signed) *A.B.*

N.O., witness.

P.Q., witness.

No. 3.

Certificate by Notary on Copy of foregoing Schedule.

I certify that what is above written is a true copy.

(Signed) *L.M.*, Notary-Public.

SCHEDULE (GG).

Form of Assignment of a Bond and Disposition in Security constituted by Infeftment.

I, *A.B.* [*name and design cedent*], in consideration of the sum of [*insert sum*] now paid to me by *C.D.* [*name and design assignee*], do hereby assign and dispoise to and in favour of *C.D.* and his executors [or heirs, excluding executors] and assignees whomsoever, a bond and disposition in security [or heritable bond, or other security, as the case may be], dated the [*insert the date, and when recorded, add, and recorded as after mentioned*], for the sum of [*insert sum*] granted by *E.F.* [*name and design debtor*] in my favour [or in favour of *G.H.*, as the case may be], with interest from the [*insert date*], and also all and whole [*describe or refer as in Schedule (E) or Schedule (G), as the case may be, to the lands*], (a) all as specified and described in the said bond and disposition in security and instrument of sasine thereon [*if the bond is recorded omit the words "and instrument of sasine thereon,"*] recorded in the [*here specify the register of sasines in which the sasine or bond*]

8 and 9
Vict., c. 31,
Sch. No. 1.

is registered] on the [*specify date of registration*] (b). IN WITNESS
WHEREOF, &c. [*insert a testing clause in usual form*].

(Signed) A.B.

G.H., witness.

I.K., witness.

NOTE.—(a) Where the assignation is made under any real burdens, conditions, provisions, or limitations, here insert or refer to them in or as nearly as the circumstances of the case may require in the form of Schedule (D).

(b) If the assignation is granted, not by the original creditor in the security, but by a person to whom the security has already been assigned, or in whom it has become vested by succession or diligence, the conveyance will shortly narrate here the title or series of titles by which the grantor of the conveyance has right to.

SCHEDULE (HH).

Form of Instrument in favour of an Assignee to an Heritable security following on a deed granted for further purposes or objects.

8 and 9
Vict., c. 31,
Sch. No. 3.

At there was by [*or on behalf of*] A.B. of Z., presented to me, notary-public subscribing, a bond and disposition in security [*or other security, or extract, as the case may be*], dated [*insert date, and where recorded in the register of sasines insert date of recording, and specify register of sasines; and where sasine has been expedite thereon, add, and sasine thereon, recorded in the (specify register of sasines) on the (insert date)*], granted by C.D. [*insert designation*] in favour of E.F. [*insert designation*], by which bond and disposition in security [*or as the case may be*] the said C.D. bound and obliged himself [*insert the personal obligation so far as necessary, and disposition of the lands in security, with the description of them, and also all real burdens, &c., if any, all as set forth at full length or by reference in the bond and disposition or other security*]. As also there was presented to me an assignation [*or other conveyance or extract*], dated [*insert date*], granted by the said E.F., by which the said E.F. assigned the said bond and disposition in security [*or other security, as the case may be*], and sums of money and lands therein contained, to the said A.B. and his heirs, executors, and representatives whomsoever [*or otherwise as the case may be, and if the deed be granted in trust, or for specific purposes, add, but in trust always, or for the uses and purposes specified in said assignation, or otherwise, as the case may be. If the person in whose favour the instrument is taken is not the donee of the original creditor, but of one who has acquired right*]

to the security, here specify shortly the title or series of titles by which the deceased acquired such right]. WHEREUPON, &c. (as in Schedule (J), to the end).

SCHEDULE (II).

Form of Writ of Acknowledgment by a Person infeft in Lands, in favour of the Executors or Executor-nominate, or of the Donees or Donee, Legatees or Legatee, or Heir of the Creditor, in an Heritable Security affecting such Lands.

I, A.B. [insert name and designation of grantor], hereby acknowledge C.D. [insert name and designation of executors or executor, or of donees or donee, legatees or legatee, or heir, and where the executors or donees, being more than one, are appointed to hold the estate of the deceased in trust for the purposes of the testamentary or other deed or writing, and not wholly for their own beneficial interest, here add, if desired by the party, and not expressly precluded by the terms of said deed or writing, and the survivors or survivor of them] as executor [or executors] nominated by E.F. [insert name of grantor of testamentary deed or other writing] in his will [or trust-disposition and settlement, or other testamentary deed or writing] dated [insert date], [or as donee of the moveable estate of the said deceased E.F., or as legatee of the bond and disposition in security after mentioned and sums thereby secured, or otherwise in terms of the deed or writing, or as the case may be, specifying the deed as above, or, as heir of said deceased E.F., specifying the relationship of the heir where the writ is granted to an heir] to be in right of a bond and disposition in security [or heritable bond, or as the case may be], dated [insert date, and, where recorded in register of sasines, add, and recorded as after mentioned], for the sum of [insert sum] granted by [insert name and designation of debtor] in favour of [insert name and designation of the original creditor, and in cases where executors are excluded insert the destination at length or refer to the recorded minute of exclusion], and sasine thereon [or where the bond and disposition itself is recorded in the register of sasines, omit the words "sasine thereon"] recorded in the [specify the register of sasines in which the sasine or bond is recorded] on the [specify date of registration], over all and whole [describe or refer as in Schedule (E) or Schedule (G) to the lands; if the will or settlement, &c. be granted in trust or for specific purposes, add, but in trust always for the uses and purposes specified in said deed or writing, or as the case may be. If the person or persons in whose favour the writ

8 and 9
Vict., c. 31,
Sch. No. 2.

is granted is not the executor, or are not the executors, &c., of the original creditor, here specify shortly the title or series of titles by which the deceased acquired right]. IN WITNESS WHEREOF [insert a testing clause in usual form].

(Signed) A.B.

G.H., witness.

I.K., witness.

SCHEDULE (JJ).

Form of Instrument in favour of an Executor or Heir of a Creditor who died intestate in right of an Heritable Security.

8 and 9
Vict., c. 81,
Sch. No. 3.

At there was by [or on behalf of] A.B. of Z., &c. [as in Schedule (HH) down to and including the description of the lands and the reference, if any, to real burdens]. As also there was presented to me testament dative of the said deceased E.F., expede before the commissary of the county of on the [insert date of confirmation], whereby the said A.B. was ordained and confirmed executor-dative of the said deceased E.F. (if there are more than one executor-dative appointed the necessary alterations to be made) [or a decree of general (or special) service in favour of the said A.B. as (specify character in which heir was served) to the said E.F., dated (insert date of service) expede before the Sheriff of and recorded in Chancery the day of] whereby the said A.B. acquired right to the said bond and disposition in security [or as the case may be; and if the person in whose favour the instrument is taken is not the executor or heir of the original creditor, but of one who has acquired right to the security, here specify shortly the title or series of titles by which the deceased acquired such security]. WHEREUPON, &c. [as in Schedule (J) to the end].

SCHEDULE (KK).

Form of Instrument in favour of the Executors or Executor-nominate, or of the Disponee or Legatee of a Creditor in right of an Heritable Security.

8 and 9
Vict., c. 81,
Sch. No. 3

At there was by [or on behalf of] A.B. of, &c. [as in Schedule (HH) down to and including description of lands and the reference to real burdens]. As also there was presented to me a testament [or general disposition, or trust-disposition and settlement, or other testamen-

tary deed or writing, or extract, or otherwise, as the case may be], dated [*insert date*], granted by the said deceased *E.F.* [*if necessary, say, who died after (or before as the case may be) the commencement of the Titles to Land Consolidation Act 1868*], by which the said *E.F.* nominated the said *A.B.* to be his executor, [*or assigned and disposed his whole heritable and moveable estate, or otherwise, as the case may be, or gave and bequeathed his whole moveable estate and effects to the said [deceased]* A.B.; or gave and bequeathed the said bond and disposition in security, and sums therein contained, to the said A.B.; and if the deed be granted in trust, or for specific purposes, add, but in trust always, or for the uses and purposes specified in said deed, or otherwise as the case may be, whereby the said A.B. is now in right of the said bond and disposition in security (or as the case may be). If the person in whose favour the instrument is taken is not the executor, donee, Assignee, or legatee of the original creditor, but of one who has acquired right to the security, here specify shortly the title or titles by which the deceased acquired such security*]. WHEREUPON, &c. [*as in Schedule (J) to the end*].

* The word "deceased" has been inserted *per incuriam*. It will of course be omitted in practice.

SCHEDULE (LL).

Form of Instrument in favour of a Trustee on a Sequestrated Estate, or of Liquidators of a Joint Stock Company in right of an Heritable Security.

At there was by [*or on behalf of*] *A.B.* [*design him as in Schedule (O)*] presented to me, &c., [*as in Schedule (HH) down to and including description of lands and reference to real burdens, if any*]. As also there was presented to me extract act and warrant of confirmation in favour of the said *A.B.* [*or here specify the appointment of the liquidator or liquidators*], dated [*insert date*], whereby the said *A.B.* as trustee [*or liquidator, or as the case may be*], has right to the said bond and disposition in security (*or as the case may be*). [*If the bankrupt or company or partner is not the original creditor, here specify shortly the title or series of titles by which the bankrupt or company or partner acquired right to the debt.*] WHEREUPON, &c. [*as in Schedule (J) to the end*].

SCHEDULE (MM).

Form of Instrument on an Unrecorded Bond and Disposition in Security, or Unrecorded Assignment in favour of the Executor, or Disponsee, or Assignee, or Legatee, or Heir of the Creditor.

[New.] At there was by [or on behalf of] *A.B.* [insert designation], presented to me, notary-public subscribing, a bond and disposition in security [or other security, or an assignation of the bond and disposition in security after mentioned, or extracts, as the case may be] granted by *C.D.* [insert designation], and dated [insert date], by which bond and disposition in security the said *C.D.* bound and obliged himself [insert the personal obligation and disposition of the lands in security, with the description of them, and also all real burdens, &c., if any, all as set forth at full length or by reference in the bond and disposition in security, or other security, or, in the case of an assignation, say, by which assignation the said *C.D.* assigned to the said *A.B.* a bond and disposition in security, or other security, granted by (insert name and designation of grantor of bond) in favour of the said *C.D.*, dated (insert date), and recorded (insert date of recording, and specify register, or in the case of the security having been followed by sasine, say) and sasine thereon, recorded (insert date of recording and specify register), for the sum of (insert sum), and also all and whole (insert the description of the lands and real burdens, &c., or reference thereto, all as contained in the assignation)]: As also there was presented to me [here specify the title or series of titles by which the party acquired right to the bond and disposition in security, or to the assignation, in or as nearly as the circumstances of the case will admit in the form of Schedule (KK); or in the case of a bond and disposition in security or other security to heirs, excluding executors, &c., or the creditor in which died before the commencement of this Act, say, as also there was presented to me extract decree of the general (or special) service of the said *A.B.* as heir (specify character in which served) of the said *E.F.* (here specify date, and date of recording in Chancery)]. WHEREUPON, &c. [as in Schedule (J) to the end].

SCHEDULE (NN).

Form of Discharge of Bond and Disposition in Security, &c.

8 and 9
Vict., c. 31,
Sch. No. 4. I, *A.B.*, in consideration of the sum of [specify sum] now paid to me by *C.D.*, do hereby discharge a bond and disposition in security [or other security], dated [insert date], and recorded [insert date of recording if recorded, and register of sasines], for the sum

of [insert sum], granted by [insert name and designation of debtor], in favour of [insert name and designation of grantee], and all interest due thereon; and I declare to be redeemed and disburdened thereof, and of the infetment following thereon, all and whole [describe the lands], all as specified and described in the said bond and disposition in security, dated and recorded as aforesaid [and if the same has been followed by sasine, here omit the words "and recorded," and add] and instrument of sasine thereon, as the same is recorded in the [specify the register of sasines in which the sasine is recorded], on the [specify date of registration].* IN WITNESS WHEREOF, &c. [here insert a testing clause in usual form].

(Signed) A.B.

E.F., witness.

G.H., witness.

* If the grantor of the discharge is not the original creditor, but one who has acquired right to the security, specify shortly here the title or series of titles by which the grantor acquired such right.

SCHEDULE (00).

Form of Deed of Restriction of an Heritable Security.

I, A.B., in consideration of the sum of [or if no price is paid for [New.] the restriction, considering that C.D. (the debtor) has requested me to release the lands hereinafter described (or referred to) from the security hereinafter specified, but without any consideration having been paid to me therefor], do hereby declare to be redeemed and disburdened of the security constituted by a bond and disposition in security [or other security], dated [insert date], and recorded [insert date of recording if recorded, and register of sasines], for the sum of [insert sum] granted by [insert name and designation of debtor], in favour of [specify name and designation of grantee; and if the bond has been followed by sasine add] and instrument of sasine thereon, dated (insert date, if any), and recorded [specify the register and date of registration], all and whole [here describe the lands to be disburdened], and I restrict the security thereby constituted to the lands and others contained in the said bond and disposition in security other than those hereby disburdened. [If the grantor of the deed is not the original creditor, but one who has acquired right to the security, here specify shortly the title or series of titles by which the grantor acquired such right.] IN WITNESS WHEREOF, &c. [here insert a testing clause in usual form].

(Signed) A.B.

E.F. witness.

G.H. witness.

SCHEDULE (PP).

Notice of Inhibition.

[*New.*] Notice of letters of inhibition [*or, of summons containing inhibition, as the case may be.*].—*A.B.* [*insert designation of the inhibitor*] against *C.D.* [*insert designation of the inhibited*].—Signeted [*insert date of signeting*].

E.F., W.S. [*or S.S.C.*], Agent.

SCHEDULE (QQ).

Form of Letters of Inhibition.

[*New.*] VICTORIA, &c. To messengers-at-arms and others, our sheriffs, greeting: Whereas it is humbly shown to us by our lovite *A.B.* [*insert designation*], complainer, against *C.D.* [*insert designation*], that [*set forth as concisely as possible the document on which the inhibitor proceeds*]: Our will is herefore, and we charge you, that ye lawfully inhibit the said *C.D.*, personally or at his dwelling-place if within Scotland, and if furth thereof at the office of the Keeper of the Record of Edictal Citations at Edinburgh, from selling, disposing, conveying, burdening, or otherwise affecting his lands or heritages to the prejudice of the complainer; and that ye cause register these our letters and execution hereof in the General Register of Inhibitions at Edinburgh, for publication to our lieges. Given under our Signet at Edinburgh this day of in the year .

SCHEDULE (RR).

Notice of Summons of Reduction, Adjudication, &c.

[*New.*] Notice of summons of reduction [*or of adjudication, or of constitution and adjudication, as the case may be.*].—*A.B.* [*insert designation of pursuer*] against *C.D.* [*insert designation of defender*]. Signeted [*insert date of signeting*].

E.F., W.S. [*or S.S.C.*], Agent.

NO. II.

31° & 32° VICTORIÆ REGINÆ.

CAP. LXIV.

An Act to improve the System of Registration of Writs relating to Heritable Property in Scotland.

[31st July 1868.]

WHEREAS it is expedient to amend the system of registration of writs relating to lands and heritages in *Scotland*, to lessen the number of registers, and to facilitate searches thereof:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Land Re- Short title.
gisters (*Scotland*) Act 1868."

2. The term "Register of Sasines," as used in this Act, shall be held as applying to the registers directed to be kept by the Act 1617, c. 16, for the Registration of Sasines, Reversions, and other Writs directed to be recorded therein by that Act or by any subsequent Act of Parliament; and the word "writ," as used in this Act, shall apply to and include all deeds and writings which have heretofore been in the practice of being recorded in these registers, or which may under the provisions of this Act be recorded in the General Register of Sasines. Interpreta-
tion of
terms.

3. The General Register of Sasines for *Scotland* shall be so kept that the writs applicable to each county shall be entered in a separate series of presentment books, and the writs shall be minuted in a separate series of minute books, and engrossed in a separate series of register volumes, in the order of presentment, and where any writ shall contain land in more than one county such writ shall be entered by the ingiver in the presentment book of such of these counties as may be specified in the warrant of registration hereinafter provided for, and shall be minuted in the minute book of such of these counties or county as are specified in said warrant, and shall be engrossed at length in the division of the Register applicable to one only of the said counties; and a memorandum shall be entered in each division of the register applicable to the other counties or county in the pre- In General
Register of
Sasines,
writs of
each county
to be kept
separate.

sentment book of which it is entered as aforesaid, setting forth the volume of the register and the folio or folios of such volume in which such engrossment is made; and such memorandum shall be deemed to be equivalent to full engrossment of such writ in the division of the register wherein such memorandum shall be entered as aforesaid: For the purposes of this Act, the barony and regality of *Glasgow*, and also the stewartry of *Kirkcudbright*, shall each be treated as a county.

All writs shall have a warrant of registration endorsed thereon, specifying county or counties in which lands lie.

4. All writs which may be recorded in the General Register of Sasines in terms of this Act shall, previous to being presented for registration, have a warrant endorsed or written thereon in or as nearly as may be in the form of Schedule (A), No. 1, hereto annexed, specifying the person or persons on whose behalf the writ is so presented, and the county or counties in which the lands to which such writ has reference are situated, and signed by such person or persons, or his or their agent or agents; and the form of warrant of registration hereby prescribed shall supersede and be used in place of the form of warrant of registration as given in Schedule (A), No. 1, annexed to "The Titles to Land (*Scotland*) Act 1858." And in the case of an assignation of an unrecorded conveyance in virtue of the provisions of the thirteenth section of the said "Titles to Land (*Scotland*) Act 1858," the warrant of registration to be employed shall be in or as nearly as may be in the form of Schedule (A), No 2, hereto annexed; and that form of warrant of registration shall supersede and be used in place of the form of such warrant given in Schedule (A), No 2, annexed to the said "Titles to Land (*Scotland*) Act 1858." And warrants of registration may be signed either by an individual agent, or by the subscription of any firm of which such agent may be a partner. And the form of warrants of registration hereby prescribed shall have the same legal force and effect as is conferred on the forms of warrants of registration annexed to the said "Titles to Land (*Scotland*) Act 1858," with reference to the conveyances for which such warrants are prescribed by the said last-mentioned Act.

Competent to record writs in other county or counties to which they refer by new warrant.

5. Provided always, that where any writ containing lands or heritages in more than one county shall not have had a warrant of registration endorsed or written thereon applicable to all the counties to which it applies, the registration of such writ shall, notwithstanding, as regards the county or counties mentioned in the warrant, and in the minute books and register volumes of which county or counties it has been recorded, or a memorandum thereof entered, be effectual; and it shall be competent afterwards to present such writ by a new warrant of registration thereon, and to minute and register such writ in the register of any other county or counties to which such writ applies in terms of such

new warrant; and in the case of such subsequent registration it shall not be necessary to engross the writ at length in the division of the register applicable to such county or counties, but the same may be effected by the insertion of a memorandum in such division of the register in the manner herein-before provided for, and such subsequent registration shall be effectual as regards the county or counties to which such writ applies, and to which such new warrant is applicable, of and from the date of such subsequent registration.

6. Where any writ shall be transmitted by post for registration in the General Register of Sasines, the keeper of said register shall, upon the receipt of such writ, cause the same to be acknowledged to the sender, and to be presented in terms of the warrant of registration thereon by a clerk in his office to be appointed by him for that purpose, and who shall be held as the ingiver of the writ; and such clerk shall attach to his signature in the presentment book the words "transmitted by," and thereafter the name of the sender; and such writ shall be recorded in the same manner as any other writ presented for registration; and on the writ being ready for delivery, intimation to that effect shall be made by post to the sender, accompanied by a note of fees, and on receipt of the fees and postage, and a request to that effect, the keeper shall transmit the writs to the sender by post; and where two or more writs transmitted by post shall be received by the keeper at the same time, the entries thereof in the presentment book and minute book shall be of the same year, month, day, and hour, and such writs shall be deemed and taken to be presented and registered contemporaneously.

Provision
for writs
transmitted
by post to
General Re-
gister of
Sasines.

7. Registration of writs in the General Register of Sasines shall, except in so far as altered by the provisions of this Act, continue to be made in conformity with the practice heretofore in use; and no error or omission in any presentment book of the General Register of Sasines to be kept as aforesaid shall invalidate, or in any way affect injuriously, the registration of any writ recorded in said register.

Registration
how to be
made, &c.

8. The whole particular Registers of Sasines in *Scotland* shall be discontinued not later than the thirty-first day of *December* One thousand eight hundred and seventy-one; and it shall be competent to the Lord Clerk Register of *Scotland*, from time to time prior to the said date, upon the application of the keeper of the General Register of Sasines, to order the discontinuance of any Particular Register of Sasines, and the Lord Clerk Register shall cause such order, signed by him, to be recorded in the General Register of Sasines, and a copy of such order, also signed by

Particular
Registers of
Sasines abo-
lished.

him, to be transmitted to the keeper of the Particular Register of Sasines to which it applies, and shall cause such order to be advertised in the *Edinburgh Gazette*, and in any newspaper or newspapers he may deem proper; and such order shall specify the day, not being less than one calendar month after the date of such publication in the *Edinburgh Gazette*, from and after which such Particular Register is to be discontinued; and after the date so to be specified in any such order as regards the Particular Register to which such order shall apply, and after the said thirty-first day of *December* One thousand eight hundred and seventy-one as regards all other Particular Registers, it shall not be competent to present, or for the keeper of the said Particular Register to receive, any writ for registration therein; and all writs which, previous to the discontinuance of the said Particular Registers respectively, might competently have been presented for registration therein, shall after said discontinuance be registrable only in the General Register of Sasines; and registration in the General Register of Sasines as herein-before directed to be kept for separate counties shall have all the force and effect previously attached to registration in such Particular Registers of Sasines respectively.

Printed abridgments, &c., and indexes, to be prepared contemporaneously with Record.

9. Printed abridgments and printed indexes, both of persons and of places, applicable to each county in *Scotland*, in the form heretofore in use in the General Register House, or in such other form as may from time to time be prescribed by the Lord Clerk Register, shall, from and after the discontinuance of all the Particular Registers of Sasines directed to be discontinued as aforesaid, be prepared under the superintendence of the Keeper of the General Register of Sasines, and as nearly as possible contemporaneously with the minute books and volumes of the register; and such indexes shall be consolidated from time to time for such periods as may be deemed expedient: Provided always, that it shall be lawful at any time for the Lord Clerk Register, if he shall think fit, to direct that abridgments shall cease to be prepared separately from the minutes, and in that case, and in lieu of the preparation and printing of said abridgments, the minutes shall be printed under the superintendence of the Keeper of the General Register of Sasines, in lieu of printing such abridgments.

Printed abridgments, &c., and indexes, to be transmitted to counties.

10. The Keeper of the General Register of Sasines shall transmit the said printed abridgments or printed minutes and indexes from time to time as the same are prepared, to the department of the Lord Clerk Register; and the Lord Clerk Register shall as soon as possible thereafter furnish to the Sheriff-clerk of each county a printed copy of the abridgments or minutes and indexes for such county, and shall also furnish to each such Sheriff-clerk, as soon as prepared and transmitted to his

department as aforesaid, a printed copy of each consolidated index applicable to each county; and where in any county there shall be a resident Sheriff-substitute and depute Sheriff-clerk, in addition to those at the county town, it shall be in the power of the Lord Clerk Register, on application made, to direct that copies of the abridgments or minutes and indexes for such county shall be also sent to such depute Sheriff-clerk in the same manner as to the principal Sheriff-clerk; and such abridgments or minutes and indexes so furnished to the Sheriff-clerks shall be made patent by them to the public on payment of such reasonable fees as may be fixed by the Lord Clerk Register, with the sanction of the Lord President of the Court of Session, the Lord Advocate, and the Lord Justice-Clerk, which fees shall be accounted for by the Sheriff-clerks to the Lord-Clerk Register as part of the fees of his department.

11. And whereas there are in the possession of the Lord Clerk Register certain spare or surplus copies of the printed abridgments of Sasines, commencing with the year One thousand seven hundred and eighty-one, which have been prepared and printed from time to time, and which will be continued according to the form presently in use up to the date when each particular register shall be discontinued under the provisions of this Act; such copies shall, so far as possible, be distributed by the Lord Clerk Register to the different counties, by depositing with the Sheriff-clerk or Sheriff-clerk depute of each county a copy of the abridgment applicable to that county.

Surplus
copies of
former
abridgments to be
sent to
counties.

12. It shall not be necessary to register in the Books of Council and Session for the purpose of preservation, or of preservation and execution, any writ competent to be registered in the General Register of Sasines, and which shall have been so registered, and such writ, being registered in the said Register of Sasines, shall be held to be registered also in the Books of Council and Session for preservation, or for preservation and execution, as the case may be: Provided such writ, when presented for registration in the said Register of Sasines, shall, in the warrant of registration prescribed by this Act, have an addition, specifying that the writ is to be registered for preservation, or for preservation and execution, as well as for publication, in or as nearly as may be in the form of Schedule (A), No. 3, hereto annexed; and the writ, with such warrant, being so registered in the said Register of Sasines, shall not be re-delivered to the ingiver, but an extract only (containing as part of said extract, where the writ is registered for execution a warrant for execution) shall be delivered, which extract may be issued without abiding the actual booking in the Register of Sasines, and shall be in the form, as nearly as may be, of the Schedule (B)

Registration
in General
Register of
Sasines
equivalent in
certain cases
to registra-
tion in the
Books of
Council and
Session.

to this Act annexed, and shall be signed on each page by the Keeper of the Register of Sasines, or a deputy duly commissioned by him to that effect; and all writs so presented to be registered for preservation and execution shall, after having been engrossed in the General Register of Sasines in terms of law, be periodically transmitted by the Keeper of the Register of Sasines to the Lord Clerk Register or his deputies, through the office of the Keeper of the Register of Deeds and Probative Writs and Protests in the Books of Council and Session, or otherwise, as the Lord Clerk Register shall prescribe, and shall be indexed, either separately or along with other Writs registered in the Books of Council and Session, as the Lord Clerk Register may direct; and such registration in the General Register of Sasines shall have all the legal effects of registration in the Books of Council and Session for preservation, or for preservation and execution, as the case may be, as well as of registration in the General Register of Sasines: Provided always, that no writ shall be held to be registered for the purpose of execution which does not contain a procuratory for registration, or clause of consent to registration, for the purpose of execution, in the body of the writ; and extracts as aforesaid, one or more, of all writs so registered in the said Register of Sasines may be issued at any time by the Keeper of the Register of Sasines, or, after transmission as aforesaid, by the Deputy Keeper of the Records, or by any one having their authority respectively; and all such extracts, and the warrants of execution therein contained, shall have all the like force and effect as any extract from the Books of Council and Session, or as any warrant of execution contained in or appended to such extract, or as any extract from the General Register of Sasines, according to the existing law and practice; and such extracts, in terms of this Act, shall be equivalent to the registered writs themselves, except where any writ so registered shall be offered to be improven; and all extracts issued in terms of this Act shall have upon them, in such form as may from time to time be prescribed by the Lord Clerk Register, a certificate or marking indicating the *cumulo* amount of stamp-duty paid on the principal writ recorded and retained for preservation.

No higher fees to be chargeable for writs registered for preservation and execution as well as publication.

13. No fees shall be chargeable at the office of the Keeper of the Register of Deeds and Probative Writs and Protests in the Books of Council and Session in respect of the registration of any writs in the General Register of Sasines for preservation, or for preservation and execution as well as for publication, in terms of this Act; and the fees to be charged in respect thereof, and of the extract given out at the time of registration at the office of the General Register of Sasines, shall be the same, with the addition only of any outlay for the writing and stamps of such extract, as

would have been chargeable if the writ had been registered for publication only; and the salaries of the principal Keeper of the Register of Deeds and Probative Writs and Protests in the Books of Council and Session, and of the assistant keepers, shall be defrayed out of funds to be provided by Parliament for the purpose; and the fees of the department shall be accounted for in such manner as the Commissioners of the Treasury shall direct.

14. The certificate of registration on every writ that shall be registered in the General Register of Sasines, and re-delivered to the ingiver, shall be signed by the keeper of said register, or a deputy duly commissioned by him to that effect; and no further signature in order to or in token of such registration shall be necessary to any writ presented for registration in the General Register of Sasines; but every folio of such writ shall, in token of such registration, be impressed with an office seal or stamp to be kept in the said General Register of Sasines. Registered writs to be authenticated.

15. The Register of Interruptions of Prescriptions shall be discontinued as a separate record, and all writs appropriate thereto may be presented and registered in the General Register of Sasines in the same manner as any other writs appropriate to said General Register of Sasines; and registration thereof in the General Register of Sasines shall have all the like force and effect as registration in the Register of Interruptions of Prescriptions previous to the passing of this Act. Register of interruptions of Prescriptions to be discontinued.

16. The particular Registers of Inhibitions and Interdictions throughout Scotland shall be discontinued, and all diligences, executions, and other writings at present appropriate to those registers, or any of them, shall be registrable only in the General Register of Inhibitions which shall be the only competent register for the registration of inhibitions and interdictions, and no publication whatever of such diligences, executions, and other writings, other than registration in said General Register of Inhibitions, shall in future be necessary, but such registration shall for all purposes whatsoever have all the legal effect of the publication at present in use. Particular Register of Inhibitions abolished.

17. The office of the Keeper of the General Register of Hornings, Inhibitions and Adjudications shall in time coming be united with the office of Keeper of the General Register of Sasines to the effect that both offices shall be held, and the duties thereof discharged, by one and the same person, and the Keeper of the General Register of Hornings, Inhibitions and Adjudications shall keep only one minute-book for inhibitions and adjudications, and also for reductions recorded in his office, as hereinafter provided General Register of Inhibitions and Register of Adjudications to be treated as one register.

for, and shall frame only one index applicable to all inhibitions, adjudications and reductions so recorded; and such minute-book and index shall be in such form as may be prescribed by the Lord Clerk Register, and shall be printed, and a copy thereof transmitted in like manner as is provided in regard to the abridgments and indexes kept in the General Register of Sasines, and shall be made patent to the public on payment of reasonable fees, to be fixed and accounted for as is provided in regard to said abridgments and indexes.

Particular Registers of Hornings, &c. not to be affected. 18. The particular Registers of Hornings and expired Charges shall be continued as at the date of the passing of this Act: Provided always that where any such register has been heretofore kept as a Joint Register of Hornings and Inhibitions, it shall cease to be a competent register for the registration of inhibitions.

Provision as to official searchers. 19. The Commissioners of Her Majesty's Treasury shall have power, upon the application from time to time of the Lord Clerk Register, to regulate the number of official searchers of the records, and to grant to such searchers such remuneration out of funds to be provided by Parliament for that purpose as their Lordships shall deem fit: Provided that nothing herein contained shall interfere with the right of parties or their agents to employ any other persons to search the records, or shall affect any liability legally attaching to such other persons, or to agents employing them respectively.

Establishment of General Register of Sasines and Inhibitions to be regulated. 20. From and after and upon the termination of the present existing interest in the office of the Keeper of the General Register of Sasines, or when the said office shall become vacant, the person to be then appointed to the said office, and his successors, shall hold no other office, and shall not, directly or indirectly, by himself or any partner, be engaged in practice before the Supreme or any Inferior Court, and he shall not, directly or indirectly, by himself or any partner, transact any business for profit other than the business devolving on him as keeper of the said register; and from and after the date fixed for this Act taking effect it shall be lawful for the Commissioners of Her Majesty's Treasury, upon the application of the Lord Clerk Register, to regulate from time to time the offices of the General Register of Sasines, and of the General Register of Hornings, Inhibitions and Adjudications under this Act, and to sanction such increased establishment of deputies, assistants, clerks, or other officers as may be necessary for the purposes hereof, and to fix the salaries and remuneration to be allowed to the officers of the said departments respectively; and such salaries and remuneration shall be payable out of funds to be provided by Parliament for that purpose; and copies of all

minutes made by said Commissioners in pursuance of this section shall be laid before Parliament forthwith, if Parliament be sitting, or if not, within fourteen days after the next ensuing sitting of Parliament.

21. It shall be competent to the Commissioners of Her Majesty's Treasury to pay to Sheriff-clerks reasonable allowances for duties discharged by them under this Act out of funds to be voted by Parliament for that purpose. Remuneration to Sheriff-clerks.

22. It shall be competent for every keeper of any register whose office shall be discontinued under the provisions of this Act to apply to the Commissioners of Her Majesty's Treasury, who shall be empowered, on proof of the average amount of the emoluments received by such keeper, after defraying the expenses of his establishment, and to which emoluments he was personally entitled under the present system of registration, to award to him such compensation as the said Commissioners shall deem just, having regard to the terms of his commission; and such compensation shall be payable out of funds to be provided by Parliament for that purpose: Provided always that if any person to whom compensation shall be awarded by way of annuity as aforesaid shall be hereafter appointed to any other office in the public service, such compensation shall be accounted *pro tanto* of the salary payable to such person in respect of such other office so long as he shall continue to hold the same. Power to keepers of registers whose offices are discontinued to apply for compensation.

23. The Keeper of the General Register of Sasines shall, from and after the discontinuance of the Particular Registers, or any of them, be subject to such and the like responsibilities and liabilities for loss and damage by reason of neglects, omissions, or errors in the Registration of writs in the General Register of Sasines as the Keepers of the Particular Registers of Sasines have hitherto been and now are subject to with reference to the Registration of Writs in such Particular Registers. Responsibilities of Keepers of Particular Registers to attach to Keeper of General Register.

24. The Lord Clerk Register shall be empowered, if he shall deem it expedient, with the view of facilitating the preparation of the presentment book and of the minute-book, to require that such particulars as he may determine respecting the writ given in for registration shall be delivered therewith, and generally shall be empowered to require such particulars, and to issue such forms and directions, as he may deem requisite or expedient for facilitating registration under this Act, and not being contrary to the provisions thereof. Directions and forms may be given by Lord Clerk Register.

25. The Commissioners of Her Majesty's Treasury shall have Power to Treasury to

prepare
amended
table of fees
of registra-
tion.

power from time to time, after the discontinuance of all the Particular Registers of Sasines in terms of this Act, to prepare amended tables of fees of registration in the Register of Sasines at *Edinburgh*, and for that purpose to reduce or regulate, and alter or vary, and, if considered expedient, to graduate according to the values of the lands or other subjects to which the fees have reference, all or any of such fees, including the fees of searches against lands and heritages, or against the proprietors thereof, and to lay such amended tables before the Lord President, Lord Clerk Register, Lord Advocate, and Lord Justice-Clerk, and any alteration in the amount of such fees shall be subject to the approval of such Commissioners; and in the preparation of any such amended tables it shall be in view that the fees to be drawn from the said department shall not be greater than may reasonably be held sufficient for defraying the expenses of the said department, or the improvement of the system of registration.

As to salary
and duties
of Lord
Clerk Re-
gister.

26. It shall be lawful for the Commissioners of Her Majesty's Treasury to provide out of monies voted by Parliament a salary to the Lord Clerk Register of *Scotland*, and to regulate the duties of such office.

Not to ex-
tend to
burgh re-
gisters.

27. This Act shall not extend or apply to Burgh Registers of Sasines.

Commence-
ment of Act.

28. This Act shall take effect from and after the thirty-first day of *December* One thousand eight hundred and sixty-eight.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A).

No. 1.

Warrant of Registration on a Writ to be registered for Publication.

Register on behalf of *A.B.* [*insert designation*] in the register of the county of *C.* [*or if the writ contains land in more than one county, in the registers of the counties of C., D., E., and F.*] [*or register, &c., along with assignation [or assignations] or writ of resignation hereon, in the register of the county of C., or in the*

register of the counties of *C.*, *D.*, *E.*, and *F.*] [*or otherwise as the case may be.*]

(Signed) *A.B.*
 [or] *G.H.*,
 W.S., Edinburgh, Agent.
 [or] *J.K. & L.*,
 W.S., Edinburgh, Agents.
 [*or as the case may be*]

No. 2.

Warrant of Registration on a Writ when presented with Assignment apart, or Notarial Instrument for Publication.

Register on behalf of *A.B.* [*insert designation*] along with the assignment [*or assignments, or notarial instrument*] docketed with reference hereto [*or otherwise as the case may be*] in the register of the county of *C.* [*or if the writ and assignment, or assignments, or notarial instrument have reference to land in more than one county, in the registers of the counties of C., D., E., and F.*]

(Signed) *A.B.*
 [or] *G.H.*,
 W.S., Edinburgh, Agent.
 [or] *J. K. & L.*,
 W.S., Edinburgh, Agents.
 [*or as the case may be*]

No. 3.

Warrant of Registration on a Writ to be registered for Preservation, or Preservation and Execution, as well as Publication.

Register on behalf of *A.B.* [*insert designation*] for preservation [*or preservation and execution*], as well as for publication in the register in the county of *C.* [*or in the registers of the counties of C., D., E., and F.*]

(Signed) *A.B.*
 [or] *G.H.*,
 W.S., Edinburgh, Agent.
 [or] *J. K. & L.*,
 W.S., Edinburgh, Agents.
 [*or as the case may be*]

SCHEDULE (B).

Extract of Deed containing Warrant of Execution.

At Edinburgh, the day of One thousand
 eight hundred and , between the hours and
 forenoon [*or as the case may be*], the writ with warrant
 of registration thereon, herein-after engrossed, ~~was~~ presented by
 [*insert name and designation of presenter*] for registration in the
 General Register of Sasines for publication, and also as in the
 books of the Lords of Council and Session for preservation [*or for*
preservation and execution, as the case may be], and is, with said
 warrant of registration, recorded in the Register of Sasines as
 follows:—

[*Insert full copy of the deed and Warrant of Registration, and
 where deed is recorded for execution, insert Warrant for Execution
 as follows:—*]

And the said Lords grant warrant to messengers-at-arms in
 her Majesty's name and authority to charge the party or parties
 aforesaid, bounden by the foresaid writ personally, or at his, her,
 or their respective dwelling-place or places if within Scotland,
 and if furth thereof, by delivering a copy or copies of charge at
 the office of the Keeper of the Record of Edictal Citations at Edin-
 burgh, to pay, implement, and perform the whole sum or sums or
 obligations, or any of them, specified in the said writ, all in terms
 and to the effect therein contained, and that to the party or parties
 to whom the said sum or sums or obligations are, by the terms of
 said writ, payable or undertaken, within six [*or fifteen, as the case
 may be*] days if within Scotland, and if furth thereof, within
 twenty-one days next after he, she, or they are respectively
 charged to that effect, under the pain of poinding and imprison-
 ment, the term or terms of payment being always first come and
 bygone; and also under deduction of any sum or sums paid to
 account (if any); and also grant warrant to arrest the said party
 or parties bounden as aforesaid, his, her, or their readiest goods,
 gear, debts, and sums of money, in payment and satisfaction of
 the said obligations, or any of them; and if the said party or
 parties bounden as aforesaid fail to obey the said charge, then to
 poind the said party or parties bounden as aforesaid, his, her, or
 their readiest goods, gear, and other effects; and if needful for
 effecting the said poinding, grant warrant to open all shut and
 lockfast places in form as effeirs.

Extracted on this and the preceding pages by me,
 Keeper of the General Register of Sasines [*or deputy
 keeper of the records, or other officer duly authorised, as
 the case may be*].

(Signed) A.B.

No. III.

ADDITIONAL FORMS.

(1) *Form of a Bond and Disposition in Security.*(a)

I, *A.B.* [*here name and design the Grantor*], grant me to have instantly borrowed and received from *C.D.* [*here name and design the Creditor*], the Sum of [*insert the Sum*] sterling; which sum I bind myself, and my Heirs, Executors and Representatives whomsoever, without the necessity of discussing them in their order, to repay to the said *C.D.*, his Executors [*or his Heirs, excluding Executors*] or Assignees whomsoever, at the Term of [*here insert the date and place of payment*], with a fifth part more of liquidate Penalty in case of failure, and the interest of said principal sum at the rate of per centum per annum from the Date hereof to the said Term of Payment, and half-yearly, termly, and proportionally thereafter during the not-payment of the same, and that at two Terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first Term's Payment of the said Interest at the term of next, for the Interest due preceding that Date, and the next Term's Payment thereof at following, and so forth, half-yearly, termly, and proportionally thereafter during the not-payment of the Principal Sum, with a fifth part more of the Interest due at each term of liquidate Penalty in case of failure in the punctual Payment thereof. And in Security of the Personal Obligation before written, I Dispose to and in favour of the said *C.D.* and his Executors [*or his Heirs, excluding Executors, as the case may be*] or Assignees whomsoever, (a) heritably, but redeemably as after mentioned, yet irredeemably in the event of a Sale by virtue hereof, All and Whole [*here Describe or Refer as in Schedule (E) or Schedule (G) to the Lands, and if the Lands are held under any Real Burdens, Conditions, Provisions or Limitations, Insert them here or Refer to them in, or as nearly as the circumstances may admit in, the form of Schedule (D)*], and that in Real Security to the said *C.D.* and his foresaids of the whole Sums of money above written, Principal, Interest, and Penalties: And I Assign the Rents; and I Assign the Writs; And I Grant Warrandice; And I Reserve Power of Redemption; And I Oblige myself for the Expenses of Assigning and Discharging this Security; And on Default in Payment I Grant Power of Sale; And I Consent to Registration for Preservation and Execution. IN WITNESS WHEREOF, &c. [*insert a testing clause in usual form*].

(a) This Form is given with reference to a suggestion at the end of note (h), p. 161.

(2) *Form of Minute Excluding Executors from an Heritable Security, which has been recorded in the Register of Sasines without or along with a Notarial Instrument, and from an Assignment of the Security.*(b)

I, A.R. [here name and design the Creditor], hereby Exclude Executors from the Bond and Disposition in Security [or other Security], dated the day of in the year , granted by C.D. in favour of me and my Executors or Assignees whomsoever (or in favour of M.N. and his Executors or Assignees whomsoever, or otherwise as the case may be), for the Sum of £ sterling, over (or otherwise as the case may be) All and Whole the Lands of (give the leading Name or Names or some other distinctive description of the Lands as contained in the recorded security) situated in the County (or Counties) of [or in the Burgh (or Burghs) of and County (or Counties) of].[x] Which Bond and Disposition in Security (or otherwise as the case may be) was (if the Bond has been recorded along with a Warrant of Registration, say, with Warrant of Registration thereon, and if a Notarial Instrument has followed recorded along with the Bond say, and Notarial Instrument thereon) recorded in favour of (here specify the party in whose favour the Registration has taken place), in the [here specify the Register of Sasines—e.g., the General Register of Sasines, or the Particular Register of Sasines for the County of , or the Register (or Registers), of the County (or Counties) of , or the Register (or Registers) of the Burgh (or Burghs) of , or otherwise as the case may be], on the day of in the year . [If the Grantor is not the original Creditor in the Bond, but has acquired right by Assignment or other Deed, say, And also from the Assignment of the said Bond and Disposition in Security granted by the said M.N. (or otherwise as the case may be) in favour of me and my Executors or Assignees whomsoever, dated the day of in the year , and (if recorded with Warrant of Registration say, with Warrant of Registration thereon in my favour) recorded in the (here specify Register and date of Registration as before)]. IN WITNESS WHEREOF, &c. [add Testing Clause in usual form].

(b) This form is suggested with reference to our remarks on the Statutory Form of the Minute, *supra*, p. 154.

(3) *Form of Minute Excluding Executors from an Heritable Security, not recorded in the Register of Sasines, but which has been followed by an Instrument of Sasine or Notarial Instrument so recorded.*(c)

I, *A.B. &c.* (Take in from preceding form down to [x]). Which Bond and Disposition in Security was followed by an Instrument of Sasine (or Notarial Instrument) in my favour (or in favour of the said *M.N.*, or otherwise as the case may be; and if the Instrument of Sasine was dated specify date) recorded (if recorded with Warrant of Registration, say with Warrant of Registration thereon in my favour, or in favour of the said *M.N.* or otherwise as the case may be) in the (here specify the Register of Sasines as in the preceding form) on the day of in the year . [If the Grantor is not the original Creditor in the Bond, but has acquired right by Assignment or other Deed say, And also from the Assignment, &c., as in the preceding Form.]

(4) *Form of Minute of Removal of the Exclusion of Executors from an Heritable Security.*(c)

I, *A.B.* (here name and design the Creditor), hereby Remove the Exclusion of Executors, contained in [or indorsed on] the Bond and Disposition in Security [or Assignment, or otherwise as the case may be, specify the same as in No. (2) *supra*, down to [x]] or contained in the Minute of Exclusion of Executors executed by me (or by *G.H.*, or as the case may be) dated the day of in the year 18 , and recorded in the (specify Register of Sasines) on the day of in the year 18 , whereby Executors were excluded from the Bond and Disposition in Security (specify the same as in No. (2), *supra*, down to [x], and also from the Assignment, &c., as in No. (2), *supra*). IN WITNESS WHEREOF, &c. [add a Testing Clause in usual form].

(c) See note (b), p. 146.



INDEX.

	Page
ACCEPTANCE by Vassal of Judicial Relinquishment of Superiority,	144
of Voluntary Relinquishment of Superiority,	145
ACKNOWLEDGMENT— <i>Writ of.</i> (See <i>Heritable Securities.</i>)	
ACTS OF PARLIAMENT,	
1474, c. 57,	140
1540, c. 106,	99
1661, c. 24,	98
1661, c. 32,	155
1672, c. 19,	100
1685, c. 22,	6, 7, 32
1693, c. 35,	139
1695, c. 24,	93
1696, c. 5,	190
20 Geo. II. c. 50,	127, 137
54 Geo. III. c. 137,	151
6 and 7 Gul. IV. c. 33,	188
8 and 9 Vic. c. 31, now repealed,	3
c. 35, (See Appendix pp. 86-90),	3
not repealed except § 6,	8
10 and 11 Vict. c. 47, now repealed,	4, 8
c. 48, do.	5, 8
c. 49, do.	5, 8
c. 50, do.	5, 8
c. 51, do.	5, 8
11 and 12 Vict. c. 36,	6
13 and 14 Vict. c. 13, now repealed,	61
13 and 14 Vict. c. 36,	101
17 and 18 Vict. c. 62, now repealed,	176
19 and 20 Vict. c. 79,	190
c. 91,	151
21 and 22 Vict. c. 76, now repealed,	6

	Page
ACTS OF PARLIAMENT—continued.	
23 and 24 Vict. c. 148, now repealed,	7
24 and 25 Vict. c. 114 and c. 121,	69
30 and 31 Vict. c. 97,	(See <i>Appendix</i> , p. 18), 61, 208
31 and 32 Vict. c. 64, (<i>Ib.</i> p. 133 to 144),	15, 16, 43, 184, 195, 198
c. 100,	15, 88, 90, 196, 199
c. 101, (See "Titles to Land Consolidation Act.")	
ACTS OF SEDERUNT.	
Power of Court of Session to pass,	95, 202
passed under repealed Acts to remain in force till Court pass new Acts,	202
8d July 1846,	125
14th July 1847, }	
17th Nov. 1849, }	95
ADDITIONAL SHEETS to be added for continuation of Writs, &c.,	
engrossed on Conveyance,	184
Testing Clause in such cases,	185
ADJUDGER—(See <i>Adjudication</i>)	
ADJUDICATION, nature and object of the Process of—and when used,	
<i>Procedure in, prior to 1847,</i>	97
General Charge and Summons of Constitution,	98
Decree <i>Cognitionis Causa</i> ,	98
Special Charge, General Special Charge, and Summons of Adjudication,	99
Alternative Conclusion for General and Special Adjudication,	100
Adjudication for Debt,	100
Adjudication in Implement,	101
Bill for Summons of Adjudication,	101
<i>Procedure since 1847 and under present Acts,</i>	101
Charges abolished,	101
Procedure in Action of Constitution,	101
Adjudication,	102
not necessary to libel for Special Adjudication,	100
Bill for Summons of Adjudication abolished,	note (g), 101
in Combined Action of Constitution and Adjudication,	102
<i>Decree of Adjudication, Sale, &c., Effect of,</i>	104
does not now contain Warrant of Infetment,	note (g), 105
<i>Completion of Feudal Title of Adjudger or Purchaser,</i>	105
Infetment by recording Decree with or without Notarial Instrument,	105
Charter of Adjudication—recorded or followed by Instrument of Sasine or Notarial Instrument,	106
Entry with Superior,	106
Completion of Title of Adjudger, and Right of Superior protected,	108

INDEX.

151

	Page
ADJUDICATION— <i>continued.</i>	
<i>of Heritable Securities,</i>	105, 174
Completion of Title of Adjudger,	
(1) by recording Abbreviate in Register	
of Sasines, *	174
(2) by recording Decree of Adjudication in	
Register of Sasines,	174
ANNUS DELIBERANDI,	98, 100
Period now shortened to six months,	104
APPARENT HEIR, Acts 1661, c. 24, and 1695, c. 24, not to be	
affected by provisions of present Act as to Special	
Service,	98
Constitution and Adjudication against—for Debt or Obliga-	
tion of Ancestor—or of himself. (See <i>Adjudication.</i>)	
ARRANGEMENT OF CLAUSES of the Act,	17
(See also <i>Appendix</i> , pp. i.—viii.)	
ASSIGNATION OF HERITABLE SECURITIES. (See <i>Assignee.</i>)	
of RENTS, Clause of in Disposition,	25, 80
in Bond and Disposition in Security,	162
(See § 119, <i>Appendix</i> , p. 65)	
of UNRECORDED CONVEYANCE. (See <i>As-</i>	
<i>signee—Completion of Title.</i>)	
of WRITS, Clause in Disposition,	25, 80
Bond and Disposition in Security,	162
(See § 119, <i>Appendix</i> , p. 65.)	
ASSIGNEE of <i>Heritable Security, constituted by Infeftment,</i>	3, 166
Completion of Title of— <i>inter vivos,</i>	166
Disposition and Assignment,	167
Form of Assignment,	167
Recording Assignment,	167
Notarial Instrument on Assignment,	167
Completion of Title of, <i>Mortis Causa,</i>	168
Where Executors are not Excluded,	169
A. By Writ of Acknowledgment in favour of	
Executor-Nominate or Disponee duly	
confirmed,	169
B. By Notarial Instrument in favour of Execu-	
tor-Nominate or Disponee duly con-	
firmed,	10
Where Executors have been Excluded, or Creditor	
died before 31st December 1868,	172
Notarial Instrument in favour of Grantee or	
Legatee,	172
<i>of Heritable Security, not constituted by Infeftment,</i>	174
Completion of Title of, where Executors not excluded,	176
where Executors are excluded,	177

	Page
ASSIGNEE—of <i>Unrecorded Conveyance</i>—continued.	
Completion of Title of, by Disposition and Assignment,	53
under Titles Acts of 1858 and 1860, note (a),	50, 53
under present Act,	54
Form of Assignment,	
Written on Conveyance,	55
by Separate Deed,	55
Separate Assignment must be docketed with refer-	
ence to Warrant of Registration on Conveyance,	56
Was Docquet essential under Titles Acts of 1858 and	
1860?	note (r), 56
Warrant of Registration on Assignment, note (t),	56
Forms of,	56
Registration of Assignment equivalent to Sasine on	
Conveyance,	56
Notarial Instrument in favour of Assignee to be	
recorded along with Conveyance,	57
must be docketed,	57
Notarial Instrument, where Conveyance is not to be	
recorded,	57
B	
BEQUEST of Lands, Form of	68
BOND AND DISPOSITION IN SECURITY. (See <i>Heritable Securities</i>.)	
Form of,	(Appendix, p. 145)
BOND of Credit,	151
BOOKING TENURE, Lands in Paisley held by, to be regulated	
by Provisions of Statute as to Burgage-Lands,	30, 193
BRIEF FROM CHANCERY in Services of Heirs,	70
abolished,	4, 71
BURDENS. (See <i>Public Burdens—Real Burdens</i>.)	
BURGAGE SUBJECTS. (See <i>Disposition—Entry with Superior—Services of Heirs—Town-Clerks</i>.)	
Provisions for recording Deeds relating to, where no Burgh	
Register of Sasines kept,	192
C	
CHANCERY, Brief from, in Services—now abolished,	70, 71
Director of. (See <i>Crown, Entry with</i> .)	
Precept from. (See <i>Precept</i> .)	
Sheriff of Chancery. (See <i>Service of Heirs</i> .)	
CHARGES to Enter Heir—as preliminary to Constitution and Adju-	
dication. (See <i>Adjudication</i> .)	
CHARTER. (See <i>Crown, Entry with—Entry with Superior</i>.)	
CLARE CONSTAT. (See <i>Crown, Entry with—Entry with Superiors—Superiority</i>.)	

INDEX.

153

	Page
CLAUSE of <i>Direction</i> to record part of Deed,	47
Warrant of Registration on Deed, part of which so recorded, (<i>Appendix</i> , p. 98),	48
Notarial Instrument on Deed containing a, of <i>Registration</i> . (See <i>Registration</i> .) in Register of Tailzies. (See <i>Entail</i> .) of <i>Resignation</i> . (See <i>Resignation</i> .)	48, 52
CLAUSES of the Act—Arrangement of,	17
(See also <i>Appendix</i> , pp. i.—viii.)	
COMMENCEMENT OF ACT,	18
COMMISSION—Report of Law, of 1838,	1
COMPLETION OF TITLE of <i>Adjudger</i> . (See <i>Adjudication</i> .)	
of <i>Assignee</i> to Heritable Securities. (See <i>Assignee</i> .)	
to Unrecorded Conveyance. (See <i>Assignee</i>)	53
of <i>Beneficiaries</i> under lapsed Trusts,	61
of <i>Congregations</i> , Religious Bodies, &c.,	61
of <i>Disponee</i> , by Infestment or its Equivalent,	38
(1) by Instrument of Sasine,	38
(2) by Recording Conveyance in Register of Sasines,	39
(3) by Notarial Instrument,	49
(4) by Resignation <i>ad remanentiam</i> ,	53
of <i>Executors</i> in Heritable Securities. (See <i>Assignee—Executors</i> .)	
of <i>General Disponee</i> . (See <i>Settlements of Heritage Mortis Causa</i> .)	
of <i>Heir</i> . (See <i>Crown, Entry with—Entry with Superior</i> .)	
in Heritable Securities. (See <i>Heir—Heritable Securities</i> .)	
of <i>Judicial Factor</i> ,	59
of <i>Liquidators</i> of Joint-Stock Companies,	58
of <i>Trustee on Sequestrated Estate</i> ,	58
of <i>Trustees</i> under Trusts Act 1867,	61
with <i>Superior</i> . (See <i>Entry with Superior</i> .)	
CONDITIONS OF ENTAIL, &c.—Reference to, allowed in place of insertion at full length, by Acts prior to 1868,	5, 9
reference to, in terms of present Act,	32
Deed &c., in which such reference may be made,	34, 188
CONFIRMATION. (See <i>Crown, Entry with—Entry with Superior— Executors—Superiority</i> .)	
CONGREGATIONS AND RELIGIOUS BODIES, &c., Completion of Title by,	61
Payment by, in lieu of Casualties of Superiority,	147
CONSTITUTION AND TRANSMISSION of Irredeemable Rights, of Redeemable Rights,	20 150
CONSTITUTION of Debt or Obligation of Ancestor against an Apparent Heir. (See <i>Adjudication</i> .)	
CONVEYANCE, Definition of. (See <i>Interpretation Clause, Ap- pendix</i> , p. 2.)	
Recording, in Register of Sasines equivalent to Infestment of Disponee,	39

	Page
CONVEYANCE <i>-continued.</i>	
Deeds, &c., which may be so recorded, . . .	41
Must have Warrant of Registration before being recorded.	
(See <i>Warrant of Registration</i>), . . .	41
Recording of new, in case of Error, . . .	187
CONVEYANCING STATUTES of 1847, . . .	4
CONVEYANCING—Old Forms of, still competent, . . .	202
CREDIT—Bond of, . . .	151
CREDITOR—Definition of . . . note (x),	151
Rights and Remedies of, not affected by Securities being made Moveable as to Succession, . . .	178
CROWN—Definition of . . .	109
CROWN CHARTERS—Definition of. (See <i>Crown, Entry with</i>), . . .	109
Act 10 and 11 Vict. c. 51 (repealed), . . .	5
CROWN, ENTRY WITH—Legislation prior to present Act, . . .	5-108
<i>Mode of Obtaining under present Act,</i>	
Signatures in Exchequer abolished, . . .	108
Draft Crown Writ and Note to be lodged with Presenter of Signatures, . . .	109
to be revised by Presenter, . . .	110
May be applied for at any time of the year, . . .	118
Rectification of mistakes in former Titles, . . .	110
Intimation of proposal to Solicitor for Commissioners of Woods and Forests, . . .	111
Procedure when former Crown Writ is withheld or mislaid, . . .	111
Amount of Crown Duties to be fixed, . . .	112
Clerks' Fees, . . .	112
Copy of Revised Draft to be furnished to Applicant, . . .	112
Procedure where no objections to revisal, . . .	112
there are objections, . . .	113
Refusal to revise, how complained of, . . .	114
Crown Writ, as revised, to be engrossed in Chancery, . . .	115
to be signed in every case by Director of Chan- cery, . . .	112, note (c), 115
not to be Sealed unless Vassal requires it, . . .	115
so prepared, to be valid Warrant for Infetment, . . .	115
Ceremony of Resignation abolished, . . .	115
<i>Forms of,</i>	
<i>By Resignation,</i> . . .	116
Crown Writ of Resignation, . . .	116
of Forfeited Superiority, . . .	142, 143
of Relinquished Superiority, . . .	144
Crown Charter of Resignation, . . .	116
<i>By Confirmation,</i> . . .	171
Crown Writ of Confirmation, . . .	117
of Forfeited Superiority, . . .	142, 143
of Relinquished Superiority, . . .	144

INDEX.

155

	Page
CROWN, ENTRY WITH— <i>continued.</i>	
<i>Forms of, by Confirmation—continued.</i>	
Crown Charter of Confirmation,	117
Alterations on form by present Act,	118
<i>of Heirs by Clare Constat, &c.</i>	
Crown Precepts and Crown Writs of <i>Clare Constat</i> in favour of Heir,	120
Confirmation need not be combined with, in any case, to be null, unless recorded before next term of Whitsunday or Martinmas,	122
of Forfeited or Relinquished Superiority,	142, 143, 144
Crown Writ or Charter of <i>Novodamus</i> ,	124
<i>of Investiture</i> in Relinquished Superiority,	146
Charter of Resignation and Confirmation combined now unnecessary,	119
All Crown Writs and Charters imply Confirmation of prior Titles,	118, 149
Testing Clause of Crown Writs and Charters,	119
Crown Writs engrossed on Conveyance not to insert or refer to Real Burdens or Conditions of Entail, if in- serted or referred to in Conveyance,	119
how to be recorded in Register of Crown Writs,	123
Forms of Crown Writs generally,	120
to be in English, and not in Latin Language,	125
Register of Crown Writs,	121
Court of Session to frame Regulations,	125
Presenter of Signatures—Salary, &c.,	125
Substitute to,	126

D.

DEBTOR in Heritable Security—Definition of	(Appendix, p. 4)
Liability of, and of the Lands, not affected by Change of law as to Succession in Securities,	178
DEBTS affecting Lands, Exchanged for other Lands under Act of Parliament, to affect such other Lands,	191
DEED, Definition of—(See Interpretation Clause, Appendix, p. 2.)	
DESCRIPTION OF LANDS may be referred to as in a prior Deed or Instrument recorded in Register of Sasines,	36
Difference between present Act and the Acts of 1858 and 1860 as to such Reference,	36
Deeds, &c., in which such Reference may be made,	37
Reference to, in Petitions for Appointment of Judicial Factor, and for Special Powers,	37, 59
under a General Name or General Names,	37
Difference between the present Act and former Acts,	38

	Page
DESIGNATION OF LANDS under General Name or Names, . . .	38
(See <i>Description of Lands</i> .)	
DESTINATION OF ENTAIL, may be referred to in Conveyances, &c., in place of being inserted at length, (See <i>Entail</i> .) . .	34
DIRECTION TO RECORD part of Conveyance, . . .	47
(See <i>Clause of Direction</i> .)	
DIRECTOR OF CHANCERY. (See <i>Crown, Entry with</i> .)	
DISCHARGE AND RENUNCIATION of <i>Heritable Security</i> , . . .	179
Short form of,	179
Description of Lands in,	179
Notarial instrument on,	180
DISPONE—Use of this word not necessary in <i>Mortis Causa</i> Settlements of Heritage,	11, 66, 67
DISPONEE, GENERAL. (See <i>Settlements of Heritage Mortis Causa</i> .)	
DISPONEE, Completion of Title of. (See <i>Completion of Title—Infestment—Notarial Instrument—Recording Conveyance—Resignation ad Remanentiam—Sasine</i> .)	
DISPOSITION of Lands not held by Burgage Tenure,	21
Clauses of, and meaning and import thereof,	22 et seq.
of Lands held Burgage,	28
Clauses of, and meaning and import thereof,	29 et seq.
General. (See <i>Settlements of Heritage Mortis Causa</i> .)	
and Assignment. (See <i>Assignee</i> .)	
DOCQUET on Assignations and Notarial Instruments, (See <i>Assignee—Notarial Instrument</i>),	

E

ENGRAVED—Deeds may be partly written and partly	190
Testing Clause in such case,	191
ENTAIL—Act amending Law of, 11 and 12 Vict., c. 36,	6
Deed of—(See Interpretation Clause, <i>Appendix</i> p. 3.)	
Clauses of,	31
Prohibitory Irritant and Resolutive Clauses,	31
These clauses unnecessary where deed has a Clause of Registration in Register of Tailzies,	32
Reference to Conditions or Destination of, under Acts of 1847, 1858, 1860,	5, 32
Do. under present Act,	38, 34
Deeds, &c. in which such Reference may be made,	34, 188
Reference to Clause of Registration in Register of Tailzies,	35
Service as Heir of. (See <i>Service of Heirs</i> .)	
Application of Price of forfeited or relinquished Superiority held under,	146
Price of forfeited or relinquished Superiority of Entailed Estate may be charged on Entailed Estate,	147
ENTRY OF HEIRS. (See <i>Crown, Entry with—Entry with Superior</i> .)	

INDEX.

157

	Page
ENTRY WITH SUPERIOR—(See <i>Superior</i> .)	
with <i>Crown</i> . (See <i>Crown</i> , <i>Entry with</i> .)	
with <i>Subject-Superior</i> ,	127
by Resignation,	127
Compulsory, under 20 Geo. II., c. 50,	127
Writ of Resignation,	128
in forfeited or relinquished	
superiority,	142, 143, 144
Charter of Resignation,	129
by Confirmation,	180
Compulsory under Act 10 and 11 Vict., c. 51,	180
under present Act,	181
Writ of Confirmation,	183
in forfeited or relinquished	
superiority,	142, 143, 144
Charter of Confirmation,	185
of Heirs, compulsory under 20 Geo. II., c. 50,	187
by Writ or Precept of <i>Clare Comtat</i> in favour of Heirs,	186
in Burgage Subjects,	188
in forfeited or relinquished superiority,	142, 143, 144
Writ and Precept available after death of Grantor,	188
not available after death of grantee,	189
need not be combined with confirmation, note (b)	187
Charter of Resignation and Confirmation combined	
not necessary,	185
All Writs and Charters imply Confirmation of prior	
Titles,	185, 149
General forms of Writs and Charters, <i>Novodamus</i> , &c.,	189
<i>Tenendas</i> and <i>Reddendo</i> may be referred to in	
place of being inserted in,	140
Writ of Investiture in relinquished superiority,	146
ENTRY, Term of,—Clause of, in Disposition,	22, 29
ERASURES not to invalidate instrument, if made before Registration,	188
EXCAMBION, Reference to Conditions of Entail in. (See <i>Entail</i> .)	
Debts affecting Excambied Lands to affect Lands obtained in	
Exchange,	191
EXCHEQUER, Rules of Court as to passing Crown Charters in,	125
Signatures in, abolished,	108
Presenter of,—duties of, in passing Crown Charters, 108 <i>et seq.</i>	
Salary of,	125
Substitute in case of illness or absence,	126
for Prince or Steward of Scotland,	126
EXCLUSION OF EXECUTORS from Heritable Security. (See	
<i>Executors—Heritable Securities</i> .)	
EXECUTORS succeed to Heritable Securities,	13, 151
unless excluded,	151

	Page
EXECUTORS—continued.	
how excluded. (See <i>Heritable Securities</i> .) (Appendix, pp. 146, 147)	
removal of Exclusion,	152
how Exclusion removed. (See <i>Heritable Securities</i> .) (App., p. 147)	
Obligation to pay to, in Heritable Security,	157, 160
Disposition of Lands to, in security of Personal Obligation,	160
Writ of Acknowledgment in favour of Executor-nominate duly confirmed,	169
Notarial Instrument in favour of Executor-nominate duly confirmed,	170
Notarial Instrument in favour of Executor-dative, duly confirmed,	171

F

FORFEITURE OF SUPERIORITY. (See *Superiority*.)

G

GENERAL DISPONEE of Lands,	52
(See <i>Settlement of Heritage Mortis Causa</i> .)	
of <i>Heritable Security</i> ,	169
GENERAL DISPOSITION of Lands, inter vivos,	169
(See <i>Settlement of Heritage, Mortis Causa</i> .)	
of <i>Heritable Securities</i> ,	169
GENERAL NAME OR NAMES of Land. (See <i>Description</i> .)	
GRANTEE OR LEGATEE of Lands, Completion of Title by. (See <i>Settlements of Heritage—Mortis Causa</i> .)	

H

HEIRS-APPARENT. (See <i>Apparent Heirs</i> .)	
HEIR, Completion of Title of. (See <i>Completion of Title—Crown, Entry with—Entry with Superior</i> .)	
in Heritable Securities from which Executors are Excluded, or in which Creditor died before 31st December 1868,	172
Writ of Acknowledgment in favour of Heir,	173
Notarial Instrument in favour of Heir duly served,	173
HEIRS—SERVICE of. (See <i>Service of Heirs</i> .)	
HEIRSHIP MOVEABLES—Right to, Abolished,	16, 201
HERITABLE SECURITIES, Act 8 and 9 Vict. c. 81 (now repealed),	8
Act 10 and 11 Vict. c. 50, do,	5
Definition of, under present Act,	150
Act extends to all kinds of,	150, 181
Old Forms may still be used	181
to be Moveable as to Succession,	18, 151
but not of Creditor who died before 31st December 1868,	152

INDEX.

159

Page

HERITABLE SECURITIES—*continued.*

to be Moveable as to Succession—*continued.*

Rights and Remedies of Creditors, and liability

of Debtors, not to be affected by change of Law, 178

may be made Heritable by Exclusion of Executors, 153, 154

Form of Minutes of Removal, (Sch. (DD) *App.*, p. 123)

Additional Form, (*App.*, p. 146)

may be again made Moveable by Removal of Exclusion, 155

Form of Minute of Removal (Sch. (EE) *App.*, p. 123)

Additional form, (*App.*, p. 147)

to remain Heritable *quoad Fiscum*, and Spouses, 155

not to be computed in calculating Legitim, 156

Constitution of, 157

Form of Bond and Disposition and Security

(Sch. (FF), *App.*, p. 123)

Additional Form, (*Appendix*, p. 145)

Explanation of Clauses of, 159, *et seq.*

Intimation, Requisition and Protest—Short

form of, 163

Advertisements of Sale under Bond, 164

Sale under, 164

Creditor selling to Count and Reckoning for Price, 165

On Sale and Consignation of Surplus Price,

Lands to be disburdened, 165

Registration of Security in Register of

Sasines, 158, 166

Transmission of. (See *Assignee—Executors—Notarial Instrument.*)

Adjudication of. (See *Adjudication.*)

Writ of Acknowledgment in favour of Exe-

cutors-Nominate, 169

of Heir where Executors have

been Excluded, 172

Discharge and Renunciation of. (See *Discharge.*)

Restriction of. (See *Restriction.*)

Fees of Town Clerks in regard to, 182

HERITAGE, Settlements of *Mortis Causa*, 61

may now be settled by Testament, 10, 65

HOLDING, MANNER OF—Clause of, in Disposition, 23

a me, or *a me vel de me*—Meaning of, 23

de me, not provided for by the Act, 24

implied in Disposition in which none is expressed, 23, 24

in Titles expedite by Judicial Factor, 60

by Liquidators, and Trustees in Se-

questration, 58

in Decree of Special Service, 91

in Decree of Adjudication, 107

in Burgage subjects to be implied to be *More Burgi*, 28

	Page
I	
INFECT, Obligation to, not necessary in <i>Disposition</i> , . . .	21, 28
INFECT, . . .	
INFECTMENT, } defined § 8. (<i>Appendix</i> , p. 1) . . .	38
Equivalents to, under the Act. (See <i>Completion of Title</i>) . . .	41, 39
Act 8 and 9 Vict. c. 85, . . .	3
<i>propriis manibus</i> , . . .	47
Warrant of, not required in Decree of Adjudication, . . .	21
INHIBITION—Defects of old law regarding, . . .	14
Amendments introduced by the present Act, . . .	15, 194
Particular Register of, abolished, . . .	194
General Register of, now the only competent Register, . . .	195
Office of Keeper of Register regulated, . . .	195
Form of (1) Letters of Inhibition in Short Form, . . .	196
(2) Warrant of Inhibition in Will of Summons, . . .	196
Difference between these forms, . . .	197
Publication of, by recording in Register of Inhibition, . . .	198
no other publication necessary, . . .	198, 199
Notice of, may be recorded before Inhibition executed, . . .	197
to take effect from Registration of Notice, if Inhibition re- corded within 21 days, . . .	198
to take effect from Registration of Inhibition if recorded after 21 days, . . .	190
not to affect <i>acquirenda</i> , unless in case of Entailed Lands, . . .	199
affects Heritage only—not moveables, . . .	199
Recall of an, on a depending summons by Petition to Lord Ordinary, . . .	200
INSTRUMENT. (See Interpretation Clause, <i>Appendix</i> , p. 3) . . .	38
INTERPRETATION CLAUSE OF ACT, § 8. (<i>Appendix</i> , p. 1), 18	
INTIMATION, REQUISITION AND PROTEST—Short form of, . . .	163
IRREDEEMABLE RIGHTS, . . .	20 <i>et seq.</i>

J

JUDICIAL FACTOR. . . (See Interpretation Clause <i>Appendix</i> , p. 4)	
In Petitions for Appointment of, and for Special Powers to, Description of Lands may be referred to instead of being inserted at length, . . .	37, 59
also in Warrants following on Petition, . . .	59, 60
<i>JUS MARITI</i> } Completion of Title by. (See <i>Heritable Securities</i> .) {	59, 175
<i>JUS RELICTÆ</i> }	155

L

LANDS, Definition of. . . (See Interpretation Clause, <i>Appendix</i> , p. 3), 41	
LEASES, Stamp duties on Writs of Acknowledgment in recorded Long, . . .	149

INDEX.

161

	Page
LEGACY OF LANDS—Form of	68
LEGATEE OF LANDS—Completion of Title by. (See <i>Settlements of Heritage Mortis Causa</i>),	
LEGITIM not to be claimed out of Heritable Securities,	14, 156
LIQUIDATORS of Joint Stock Company—Completion of Title by	58, 175
LITHOGRAPHED—Deeds may be partly written and partly	190
Testing Clause in such case,	191
LITIGIOSITY not to begin before date of Registration of Notice of Summons of Adjudication, or Reduction,	16, 200
Form of Notice, (Schedule (RR), <i>Appendix</i> , p. 182)	

M

MANDATE to sign Petition of Service of Heir,	74
MORTIS CAUSA Settlements of Heritage,	61

N

NAME, Description of Lands by General. (See <i>Description</i> .)	
NOTARIAL INSTRUMENT under 8 and 9 Vict. c. 81,	3
under Titles Acts of 1858 and 1860,	49
use of, extended by present Act, and form altered, 50, 52, note (p) 168	
in favour of <i>Assignee to Unrecorded Conveyance</i> , to be recorded along with Conveyance,	57
must be docketed with reference to Warrant of Registration,	57
Do. when conveyance is not to be recorded,	57
in favour of <i>Assignee to Heritable Security</i> constituted by Infertment,	167
Do. not constituted by Infertment, 175, 176	
Do. do., when Executors Excluded,	177
on Discharge,	52, 180
in favour of <i>Disposnee</i> , where the whole deed is not to be recorded, 50	
effect of, equivalent to infertment,	51
Form of, altered by present Act,	52
where deed contains "Clause of Direction,"	52
Separate Instruments on a Conveyance where separate lands or separate Interests conveyed,	51
Warrant of Registration necessary,	52
in favour of <i>Executor-Nominate</i> having right to Heritable Security,	170
in favour of <i>Executor-Dative</i> do. do.	171, 176
in favour of <i>General Disposnee</i> inter vivos,	52
Mortis Causa,	63
in favour of <i>Grantee or Legatee</i> of Lands by Testament or <i>Mortis Causa</i> Deed,	66, 68

L

	Page
NOTORIAL INSTRUMENT— <i>continued.</i>	
in favour of <i>Grantee</i> or <i>Legatee</i> of Heritable Securities when Executors excluded,	172
in favour of <i>Heir</i> having right to Unrecorded Conveyance of Lands , to Heritable Securities from which Executors are excluded,	178, 176
in favour of <i>Liquidators</i> and <i>Trustees</i> on Sequestrated Estates,	58
NOVODAMUS— <i>Charter of.</i> (See <i>Crown, Entry with—Entry with Superior.</i>)	

O

OBLIGATION TO INFECT, Clause of, not required in <i>Disposition</i> ,	21, 28
---	--------

P

PRECEPT FROM CHANCERY. (See <i>Crown, Entry with.</i>) of <i>Clare Constat.</i> (See <i>Entry with Superior.</i>)	
PRECEPT OF SASINE. (Form of (Schedule (B) of 8 and 9 Vict. c. 35, <i>Appendix</i> , p. 89), now not necessary,	21
PRESENTER OF SIGNATURES. (See <i>Crown, Entry with—Exchequer.</i>)	
PRINCE, Definition of,	109
Entry by. (See <i>Crown, Entry with.</i>)	
PRINTED—Deeds may be partly Written, and partly Printed, En- graved, or Lithographed,	190
Testing Clause in such case,	191
PROCURATORY of <i>Registration.</i> (See <i>Registration.</i>) <i>Resignation ad remanentiam.</i> (See <i>Resignation.</i>)	53
PROPRIIS MANIBUS Short Form of Infestment, by Husband recording Conveyance,	47
Warrant of Registration to be used in such Infestment, (<i>Appendix</i> , p. 95)	
PROVISION, Service as Heir of. (See <i>Service of Heirs.</i>)	
PUBLIC BURDENS—Obligation to relieve of, in <i>Disposition</i> ,	26, 80

R

REAL BURDENS—Reference to, allowed in place of full insertion by Acts of 1845, 1847, 1858, 1860,	5
by present Act,	35
Deeds &c. in which such reference may be made,	35, 188
RECORDING CONVEYANCE, Infestment by. (See <i>Completion of Title.</i>)	
of new in case of error,	187
REDEEMABLE RIGHTS. (See <i>Heritable Securities.</i>)	150 <i>et seq.</i>
REFERENCE. (See <i>Description—Destination—Entail—Real Burdens.</i>)	
REGISTER OF SASINES—Keeper of, Office of, regulated,	195
conjoined with Keeper of Register of Inhibitions.	195

	Page
REGISTER OF SASINES— <i>continued.</i>	
official Acts of, Keeper of, not to be affected by Interest in Writs recorded by, .	195
Registration of Conveyance, &c., in, authorised and regulated, .	186
must be in lifetime of party in whose favour Registration made, .	186
Registration, when two or more Deeds, &c., transmitted by same post to Keeper, .	187
Recording Conveyance of new in case of error, .	187
Date of Registration in, held to be Date of Deed, &c., in questions of Competition and Bankruptcy, .	190
REGISTRATION, <i>Short Clause of</i> , for Preservation or Execution, .	27, 30
may be used in Deeds of all kinds, .	27, 183
meaning and import of, equivalent to Procuratory, .	ib
<i>Clause of</i> , in Register of Tailzies, .	32
Reference to <i>Clause</i> , where no Conditions, &c., Expressed, in Deed of Entail, .	35
of Conveyance in Register of Sasines equivalent to Infestment. (See <i>Register of Sasines.</i>) .	9
Date of, in Register of Sasines, held to be Date of Deed in Competition and Bankruptcy. (See <i>Conveyance.</i>) .	190
in Register of Sasines for Preservation and Execution as well as Publication, .	46, 184
Warrant of. (See <i>Warrant of Registration.</i>)	
RELINQUISHMENT OF SUPERIORITY. (See <i>Superiority.</i>)	
REMEDIES OF CREDITORS, not affected by change of Law as to Succession to Heritable Securities, .	178
RENTS, Assignment of. (See <i>Assignment of Rents.</i>)	
RENUNCIATION of Heritable Securities. (See <i>Discharge.</i>)	
REPEALED ACTS, (§ 4, and Schedule (A), <i>Appendix</i> , pp. 4, 84), .	18
Extent and Effect of Repeal, .	19
RESIGNATION <i>AD REMANENTIAM</i> , .	53
RESIGNATION, <i>Clause of</i> , in Disposition to be <i>in favorem</i> unless expressed to be <i>ad remanentiam</i> , .	25
<i>Charter of</i> (See <i>Crown, Entry with—Entry with Superior.</i>)	
<i>Procuratory of</i> , not required if <i>Clause</i> is used, .	25
Neither Clauses nor Procuratory required in Burgage Deeds, .	28
<i>Instrument of</i> , and <i>Sasins</i> dispensed with in Burgage Deeds, .	40
Ceremony of, abolished in Entry with the Crown, .	115
<i>Instrument of</i> , <i>in favorem</i> , abolished in all cases in <i>Lands not Burgage</i> , .	115, note (e), 127
Entry with Crown by. (See <i>Crown, Entry with.</i>)	
Entry with Subject-Superiors. (See <i>Entry with Superior.</i>)	
<i>Writ of—</i> (See <i>Crown, Entry with—Entry with Superior—Superiority.</i>)	
RESTRICTION of Heritable Security, .	180
Form and effect of .	180

REVIEW of Judgments pronounced under the Act,	Page
(See <i>Services of Heirs.</i>)	201
RULES OF COURT, Power of Court to Pass, in relation to Crown	
Charter Fees,	125, 202

S

SALE—DECREE OF. (See <i>Adjudication.</i>)	Note (n) 104
SASINE—Report of Law Commission as to	1
Ceremony of giving, dispensed with in Burgage Subjects,	39
in Land not held Burgage,	3, 39
Instrument of, not now necessary, § 15,	(Appendix, p. 11), 39, 40
Form of, in Burgage Subjects.	(Sch. (I) App. p. 95), 39
in Lands not held Burgage. Schedule (B) of	
8 and 9 Vict. c. 35, (Appendix, p. 89)	
Precept of, Form of, in Lands not held Burgage,	(Ib).
not now necessary,	21
SCHEDULES,	(Appendix, pp. 84, 182), 204
SEALING Crown Writs and Charters not necessary, unless Vassal	
require it,	115
Crown Writs engrossed on Conveyance, and Crown Precepts	
and Writs of <i>Clare Constat</i> are not Sealed,	123
Testing Clause, with reference to,	119
SEQUESTRATION. (See <i>Trustee.</i>)	
SERVICE OF HEIRS Act, 10 and 11 Vict. c. 47 (<i>now repealed</i>),	5
SERVICE OF HEIRS—Procedure in, prior to 1847,	70
Brieve, Claim of Service, and Inquest abolished in,	70
Petition to Sheriff substituted for Brieve and Claim,	71
Competent in Burgage Subjects,	71
Sheriff of Chancery,	5, 72
Jurisdiction of Sheriff of Chancery and Sheriffs of Counties,	72
in General Services,	73
in Special Services,	73
<i>Petition of</i> , Nature and Form of,	73
must be subscribed by Petitioner or Mandatory,	74
Form of Mandate,	74
<i>General Service</i> , Form of Petition of	74
what it must contain,	74
as Heir of Provision, or of Tailzie,	57
where Ancestor died abroad, or where his domicile at	
death is unknown,	75
with Specification annexed,	76
combined with Special Service,	79
Representation incurred by	79
Decree of, equivalent to Verdict of Jury under Brieve,	82
Effect of Decree of	90
with Specification annexed,	94

INDEX.

165

SERVICE OF HEIRS—*continued.*

Page

<i>Special Service</i> , Form of Petition of	76
what it must contain,	77
as Heir of Provision or of Tailzie,	78
not to infer General Service, except as to Particular Lands,	79
combined with General Service,	79
Decree of, equivalent to Verdict of Jury, under Brieveo, Separate extracts of, may be given where Service embraces several Lands,	82
Effect of Decree of	84
now vests transmissible right without infeftment, 11, 90	90
manner of Holding implied in,	91
not to affect Statutes as to Apparent Heirs,	93
<i>General Procedure in Petitions of</i> ,	79
<i>Caveat</i> against Service,	79
<i>Publication</i> of Petition,	80
<i>Evidence</i> in Petition, who may now act as Statutory Commissioners of Sheriff in taking evidence,	81
<i>Decree of Service</i> by Sheriff,	82
<i>Competing Petitions</i> ,	82
Procedure in, Sisting, Conjunction,	83
<i>Expenses</i> . How Taxed and decerned for,	83
<i>Recording and Extracting</i> Decree,	84
<i>Director of Chancery</i> , duties of, in	85
<i>Review of Sheriff's Judgment in, and Appeal to Court of Session</i> , Appeal for Jury trial,	85
from Judgment of Sheriff,	86
Reduction of Sheriff's Judgment,	87
Procedure in Court of Session,	88
Advocations and Reductions under Act of 1847,	88
Finality of Judgment of Lord Ordinary and Court of Session in certain cases,	89
<i>General arrangements as to Sheriff of Chancery and other Sheriffs</i> , Acts of Sederunt to be passed,	94
Appointment and Remuneration of Sheriff and Sheriff- Clerk of Chancery,	95
Agents who may Practise in Services,	95
Depending Services at 31st December 1868, how to be proceeded with,	95
Substitute to Sheriff of Chancery,	126
SETTLEMENTS OF HERITAGE <i>Mortis Causa</i> ,	10, 61
<i>General Disposition</i> ,	62
What is a General Disponee,	63
Notarial Instrument by General Disponee,	64
Effect of,	64, 66

	Page
SETTLEMENTS OF HERITAGE <i>Mortis Causa</i>—continued.	
What titles must be exhibited to Notary by	
General Disponee,	64
Effect of General Disposition as evacuating prior	
Special Destination,	65
<i>Testament or Mortis Causa Conveyance</i> of Lands,	65, 67
Word " <i>Dispone</i> " not required in,	11, 67
Act applies only to Settlements taking effect after	
31st December 1868,	67
to be equivalent to General Disposition,	67, 68
requisites of, as to expression and execution,	68, 69
Form of Bequest of Lands,	68
Completion of Title by Grantee or Legatee of Lands,	68
Successors of predeceasing Grantee or Legatee of Lands	
under, are not to take Lands unless so expressed,	69
Lands or Residue undisposed of to go to Heir of Grantor,	69
SIGNATURES IN EXCHEQUER. (See <i>Crown Entry with Exchequer</i>.)	
SOLEMNITIES OF DEEDS. (See <i>Crown, Entry with—Testamentary</i>	
<i>Deed—Testing Clause—Witnesses</i>.)	
STAMP DUTIES ON WRITS,	149
SUBINFEUDATION— Prohibition against, not to be affected by	
provisions of the Act as to Manner of Holding,	24, 93, 189
SUCCESSORS— Meaning of, in present Act. (Interpretation Clause,	
<i>Appendix, p. 2</i>)	108
SUPERIOR—ENTRY WITH. (See <i>Entry with Superior</i>),	108
Entry with Crown. (See <i>Crown</i> .)	
Rights of, protected when Disposition, &c., contain or express	
no Manner of Holding. (See <i>Adjudication—Service of</i>	
<i>Heirs</i>),	24, 189
SUPERIORITY— <i>Forfeiture and Relinquishment of</i> ,	140
(1) <i>Forfeiture where Reddendo</i> under £5,	141
Procedure in,	141
Writ of Confirmation—Resignation—or <i>Clare Constat</i>	
from Crown or Subject-Superior following a De-	
cree of Forfeiture,	142
(2) <i>Forfeiture where Reddendo</i> exceeds £5, or in option of	
Vassal whether above or below £5,	142
Procedure in	143
Writ of Confirmation—Resignation—or <i>Clare Constat</i>	
from Crown or Subject-Superior following on Forfeiture,	
(3) <i>Judicial Relinquishment</i> , whatever amount of <i>Reddendo</i> ,	143
Not to infer passive representation,	145
Procedure in,	144
Acceptance of, by Vassal,	144
Writ of Confirmation—Resignation—or <i>Clare Constat</i>	
from Crown or Subject-Superior following a Relin-	
quishment,	144

INDEX.

167

	Page
SUPERIORITY — <i>continued.</i>	
(4) Voluntary Relinquishment,	145
Acceptance of, by Vassal,	145
Not to infer passive representation beyond value of property,	146
Writ of Investiture by Crown or Subject-Superior following on,	145
Application of Price of Entailed Superiority forfeited or relinquished,	146
Price of forfeited or relinquished Superiority of Entailed Estate may be charged on Entailed Estate,	147
<i>Payment in lieu of Casualties</i> of, by Congregations, &c.,	147

T

TENENDAS AND REDDENDO may be referred to as in prior recorded Deed,	140
TERM OF ENTRY —Clause of, in Disposition,	22, 29
TESTAMENT —Heritage may now be settled by	10, 65
TESTAMENTARY DEED or WRITING settling Heritage,	11, 67
How to be expressed and Executed,	11, 68, 69
TESTING CLAUSE of Crown Writs,	119
of Deeds as partly written, partly printed, engraved, &c.,	191
of Disposition, (See <i>Witnesses</i>),	27
of Writs engrossed on Conveyance, and continued on additional Sheets,	148, 185
TITLES TO LAND ACTS 1858 (21 & 22 Vict., c. 76),	6
1860 (23 & 24 Vict., c. 143),	7
TITLES to LAND CONSOLIDATION ACT, 1868. (<i>Appendix</i> , pp. 1-132)	
Object of,	1
General nature and plan of,	8
Arrangement of Clauses described,	17
Arrangement of Clauses and Classified Table of Contents, (<i>Appendix</i> , i-viii)	
New Enactments of,	10, 16
Preamble of,	(<i>Appendix</i> , p. 1)
Title of, and Short Title, § 1,	(<i>Ib.</i>), 18
Commencement of, § 2,	(<i>Ib.</i>), 18
Acts repealed by. § 4 and Schedule (A). (<i>Appendix</i> , p. 1, 86), 183	
applies to all Land by whatever Tenure held, § 136. (<i>Appendix</i> , p. 74), 18, 20	
old forms of Conveyancing still competent,	181, 202
TOWN-CLERKS of BURGHS —	
Preparation and Recording of Deeds by, where no Burgh Register of Sasines is kept,	192
Fees of, regulated generally,	193
Fees of, in relation to Heritable Securities,	182
Official Acts of, not affected by personal Interest in Writs recorded by them,	193

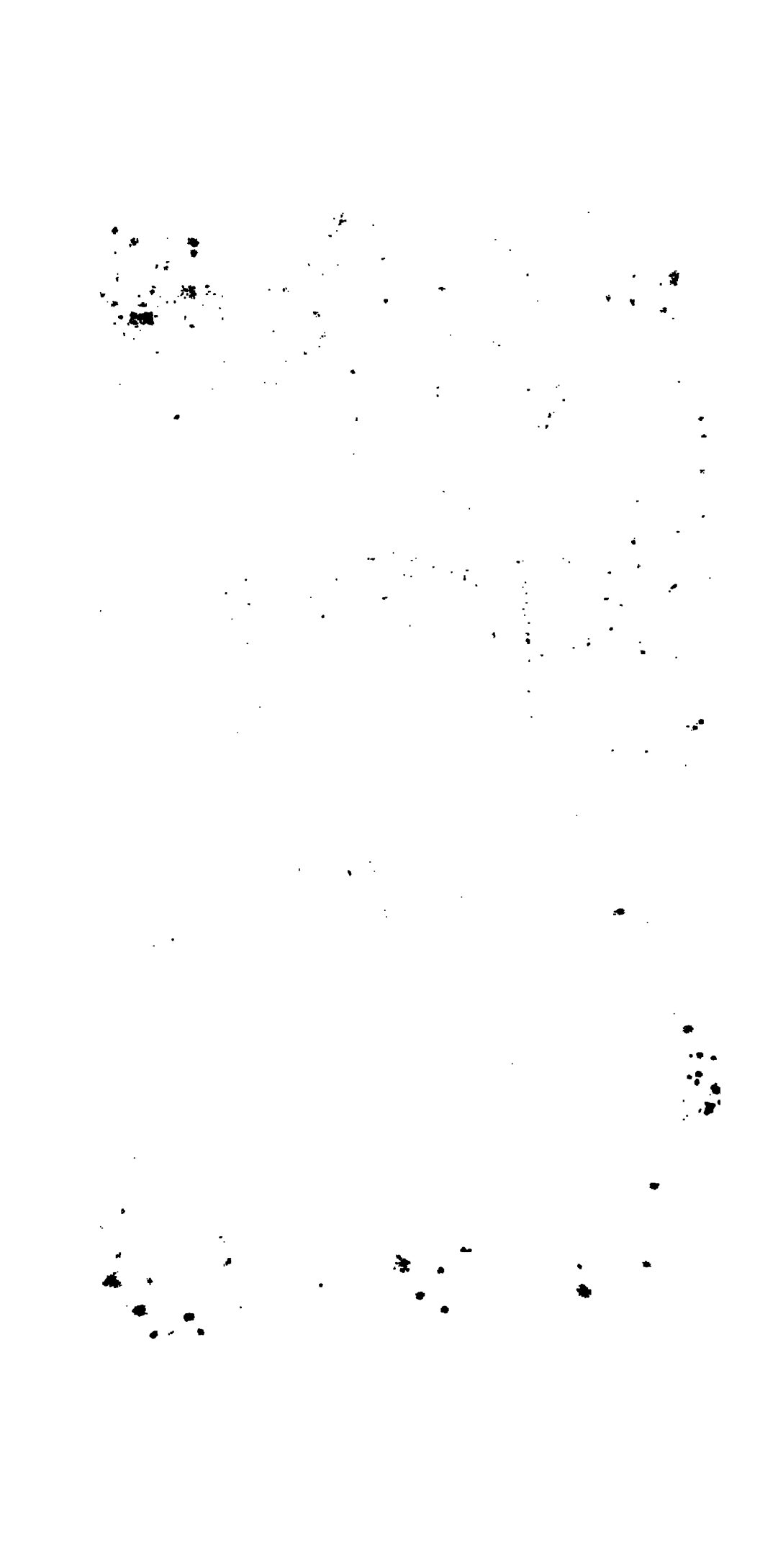
TRANSFERENCE OF LANDS ACTS of 1847, now repealed.	Page 5
TRUST—Completion of Title by Beneficiaries under a Lapsed	61
TRUSTEE on Sequestrated Estate—Completion of Title by	58
TRUSTEES—Completion of Title by, under Trusts Act 1867,	61

V

UNRECORDED CONVEYANCE. (*See Assignee.*)

W

WARRANTICE—Clause of, in Disposition,	26, 30
in Bond and Disposition in Security, (<i>§ 119, Appendix, p. 65</i>)	
WARRANT OF INFETMENT not required in Decree of Adjudication,	21, 106
WARRANT to Judicial Factors. (<i>See Description of Lands—Judicial Factor.</i>)	
WARRANT OF REGISTRATION—Forms of,	
(Schedules (F) and (H), <i>Appendix, p. 93, 94</i>)	
Forms of, Schedule (A) of Land Registers Act,	
(<i>Appendix, pp. 142, 143</i>)	
all Writs, &c. presented for Registration must have a	42, 185
except certain Burgage Writs,	43
omissions in <i>existing</i> , not to invalidate the warrant,	45, 188
requisites of <i>future</i> ,	43, 45
Subscription of Agents to	<i>Ib.</i>
on Deeds, &c. containing a Clause of Direction,	48
on Deeds, &c. recorded in Register of Sasines for Preservation and Execution as well as for Publication,	46
on Assignations separate from Conveyance,	56
new Warrant, and new recording, in case of Error,	187
WITNESSES—Females above fourteen years of age may now be	
Instrumentary	10, 27, 184
Legal Incapacity of Females to be	28
Married Women as	28
WRIT of Acknowledgment. (<i>See Heritable Security—Leases.</i>)	
of <i>Clare Constat.</i> (<i>See Crown, Entry with—Entry with Superiors.</i>)	
of Confirmation. (<i>See Crown, Entry with—Entry with Superior.</i>)	
of Investiture. (<i>See Superiority—Forfeiture and Relinquishment of.</i>)	
of Resination. (<i>See Crown, Entry with—Entry with Superior.</i>)	
engrossed on Conveyance to be authenticated,	148
may be continued on additional Sheets,	184
Stamp-duties on,	149
WRITS, ASSIGNATION of—Clause of, in Disposition,	25, 30
in a Bond and Disposition in Security, (<i>§ 119, Appendix, p. 674</i>)	162



Kinnear's Digest of Appeal Cases.

Digest and Analytical Index of the Decisions in the House of Lords, on Appeal from Scotland, from the Union till Session 1864, by JOHN BOYD KINNEAR Esq., Advocate, and of Lincoln's Inn, Barrister-at-Law. 8vo, price 15s.

* * This work, besides bringing into one view the whole Law of Scotland as settled by the House of Lords, contains references to many decided points, in nearly every department, which are not noticed at all in the abstracts of the cases given in other Digests.

"We do not hesitate to say that of some cases his Digests are the most accurate that have yet appeared."—*Journal of Jurisprudence*.

"The 'Abstracts' are for the most part distinct, clear, neat propositions, into which Mr Kinnear himself has endeavoured to compress the subject of the reports, regardless of the rubrics of reporters. The book is a valuable book; it is of course far more convenient than 'Shaw's Digest' is for the discovery of House of Lords law, and it is only about one-twelfth part the price of Shaw's four real and putative volumes."—*Scotsman*.

"There has been a hiatus in our books of reference caused by the absence of a complete digest of these cases. Mr Kinnear now very effectively supplies this want."—*Courant*.

Kinnear on Bankruptcy. Second Edition.

A Practical Treatise on the Law of Bankruptcy, under the existing Statutes in Scotland; by JOHN BOYD KINNEAR, Esq., Advocate, and of Lincoln's Inn, Barrister-at-Law. Second Edition, 8vo. Price 15s.

"We can cordially recommend it for practical use."—*Glasgow Herald*.

"This practical treatise is very complete and seems to want nothing essential to a book of reference."—*Scotsman*.

"Unquestionably the best of the treatises on this important branch of the law."—*Journal of Jurisprudence*.

Menzies' Lectures on Conveyancing. Third Edition.

Conveyancing according to the Law of Scotland, being the Lectures of the late ALLAN MENZIES, A. M., Professor of Conveyancing in the University of Edinburgh. Third Edition, containing Notes on the Titles to Land (Scotland) Acts, 1858 and 1860, other enactments, and recent decisions. Royal 8vo. Price 35s.

"A text book or student's book which can be depended upon, and read and remembered. Whatever it may have required to modernise it and bring down the information to the latest date has been added; and, so far as we can see, the treatise is as complete as if Professor Menzies had lived to edit this third edition himself."—*Scotsman*.

"We congratulate the editor on the truly admirable manner in which he has discharged the very important duties undertaken by him."—*Glasgow Herald*.

Duncan's Entail Digest.

Digest of Entail Cases, in which Deeds of Entail have been challenged on the ground of alleged defects in the Prohibitory or Fencing Clauses, with the Clauses founded on, and the judgments of the Court, by JOHN M. DUNCAN, Esq., Advocate. 8vo, price 9s.

Duncan's Entail Procedure.

Manual of Summary Procedure, under the Act for the amendment of the Law of Entail in Scotland (11 and 12 Vict., cap. 36), and Relative Statutes and Acts of Sederunt. By JOHN M. DUNCAN, Esq., Advocate. One Vol., 8vo. Price 12s. 6d.

"This book has appeared when it was most wanted; and it is satisfactory to find that a want so widely felt has been so well supplied."—*Solicitors' Journal and Reporter*.

"Another case occurred closely after that of Campbell, viz., the case of Baillie, which is reported in the Appendix to Mr Duncan's Manual of Entail Procedure "a most excellent and useful work."—*Lord Kinloch in his Note reporting the case of Henry K. Seymour for authority to sell*.

Thoms on Judicial Factors.

A Treatise on Judicial Factors, Curators Bonis, and Managers of Burghs, with Appendix of Acts of Parliament and Sederunt, and Relative and Practical Forms, by GEORGE HUNTER THOMS, Esq., Advocate. 8vo. Price 16s.

"Will be found to present in an accessible form the fruits of a laborious and careful examination of the decided cases and various Acts of Parliament bearing on this important branch of the law."—*Journal of Jurisprudence*.

Professor More's Lectures.

Lectures on the Law of Scotland, by the late JOHN S. MORE, LL.D., Professor of Scots Law in the University of Edinburgh. Edited by JOHN M'LAREN, Esq., Advocate. Two Vols., royal 8vo. Price £2, 5s.

"We think these volumes calculated to prove not only to the Student a useful introduction to the principles of the Law of Scotland, but also to be in themselves an element not without its importance in the series which forms the institutional literature of our profession."—*Journal of Jurisprudence*.

"Probably there is no Scotch law book extant in which a lawyer is so sure to find something on any subject he requires to refer to. . . . We have no hesitation in recommending the book to lawyers as a most valuable and practically useful addition to their libraries."—*Courant*.

Stair's Institutions.

Institutions of the Law of Scotland, by JAMES, VISCOUNT STAIR, with Notes and Illustrations by the late J. S. MORE, LL.D., Professor of Scots Law in the University of Edinburgh. Two Vols., 4to. Price £2, 12s. 6d.

Hume on Crimes. Fourth Edition.

Commentaries on the Law of Scotland respecting Crimes, by the Hon. DAVID HUME, one of the Barons of Exchequer, with a Supplement by BENJAMIN ROBERT BELL, Esq., Advocate. Two Vols., 4to. Price £4, 4s.

"Baron Hume's work, which must always form the foundation of our Criminal Jurisprudence."—*Alison's Criminal Law*.

Erskine's Principles.

Principles of the Law of Scotland, by JOHN ERSKINE of Carnock. A New Edition, adapted to the present state of the Law, by JOHN GUTHRIE SMITH, Esq., Advocate. One Vol., 8vo. Price 20s.

Robertson's Bankers' Law. Second Edition.

A Handbook of Bankers' Law, Second Edition, carefully revised, and containing a new chapter on Document Bills and Foreign Credits, by HENRY ROBERTSON, N.P., Bank of Scotland. Crown 8vo. Price 4s. 6d.

"Will be found useful and safe as a guide to the money dealing profession."—*Glasgow Herald*.

"For Scotland, it is the most reliable manual we have upon legal matters connected with ordinary banking practice."—*Scotsman*.

"We do not doubt that this manual will be of great utility as a work of reference to those interested in the business of banking."—*Journal of Jurisprudence*.

Buchanan on Teinds.

A Treatise on the Law of Teinds or Tithes, by WILLIAM BUCHANAN Esq., Advocate. 8vo. Price 16s.

"The reader will find abundant information on every conceivable point connected with the law of this description of property, and the rights of the Church, the heritor, the patron, and the titular."—*Journal of Jurisprudence*.

"The need for a brief, practical work on Teinds must have been felt. We think Mr Buchanan has supplied this want; and titulars, ministers, and lawyers will find every practical point brought up and discussed, with the authorities and decisions cited,—these last being brought down to the latest date. We can recommend the work."—*Scottish Law Magazine*.

PREPARING FOR PUBLICATION.

Treatise on the Parochial Ecclesiastical Law of Scotland.

By J. M. DUNCAN, Esq., Advocate, Author of "Digest of Entail Cases," and "Manual of Summary Entail Procedure." Second Ed.

Styles of Deeds and Instruments in accordance with the

Titles to Land Acts, &c., with Notes on the Completion of Titles. By the late JOHN HENDRY, Esq., W.S. Third Edition, revised by JOHN T. MOWBRAY, Esq., W.S.

Erskine's Institute of the Law of Scotland, with Notes.

By J. BADENACH NICOLSON, Esq., Advocate.

